

A NONSUBSTANTIVE REVISION
OF STATUTES RELATING TO
SOLVENCY OF INSURERS, PROPERTY AND CASUALTY
INSURANCE, OTHER TYPES OF INSURANCE COVERAGE,
AND UTILIZATION REVIEW AND INDEPENDENT REVIEW

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1	<u>Revised Law</u>	
2	Sec. 2007.009. EXPIRATION OF CHAPTER. This chapter	
3	expires September 1, 2011. (V.T.I.C. Art. 5.102, Sec. 5.)	
4	<u>Source Law</u>	
5	Sec. 5. This article expires September 1, 2011.	
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1 SUBCHAPTER E. RULES

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3 COMPENSATION INSURANCE 1001

4 CHAPTER 2051. GENERAL PROVISIONS: WORKERS' COMPENSATION INSURANCE

5 SUBCHAPTER A. APPLICABILITY AND CONSTRUCTION

6 Revised Law

7 Sec. 2051.001. DEFINITION. In this chapter, "insurance
8 company" means a stock company, mutual insurance company,
9 reciprocal or interinsurance exchange, or Lloyd's plan authorized
10 to engage in the business of workers' compensation insurance in
11 this state. (V.T.I.C. Art. 5.63.)

12 Source Law

13 Art. 5.63. The words "Company" and
14 "Association" used in this subchapter mean the Texas
15 Employers Insurance Association, or any stock company,
16 or any mutual company, or any reciprocal, or any
17 interinsurance exchange, or Lloyd's association
18 authorized to write Workmen's Compensation Insurance
19 in this State.

20 Revisor's Note

21 (1) V.T.I.C. Article 5.63 defines terms "used in
22 this subchapter," meaning Subchapter D, V.T.I.C.
23 Chapter 5. Portions of Subchapter D, Chapter 5, are
24 revised in various chapters in this subtitle. The
25 revised law substitutes a reference to "this chapter"
26 for the reference to "this subchapter" because the
27 substance of the definitions contained in Article 5.63
28 is repeated in each of the chapters of this subtitle in
29 which other articles from Subchapter D, V.T.I.C.
30 Chapter 5, are revised and to which the definitions
31 apply.

32 (2) V.T.I.C. Article 5.63 defines "company" and
33 "association." The revised law substitutes "insurance
34 company" for "company" and "association" for
35 consistency of terms used in this chapter and the Labor
36 Code. Throughout this chapter, references to
37 "company" and "association" have been changed

1 appropriately.

2 (3) V.T.I.C. Article 5.63 defines "company" and
3 "association" to include the Texas Employers Insurance
4 Association. The Texas Employers Insurance
5 Association was placed in receivership and liquidated
6 in 2004. The revised law omits the reference to the
7 Texas Employers Insurance Association accordingly.

8 (4) V.T.I.C. Article 5.63 refers to a "mutual
9 company, or any reciprocal, or any interinsurance
10 exchange, or Lloyd's association." For consistency of
11 terminology within this code, the revised law
12 substitutes references to a "mutual insurance
13 company," a "reciprocal or interinsurance exchange,"
14 and a "Lloyd's plan" for the references to a "mutual
15 company," "any reciprocal, or any interinsurance
16 exchange," and "Lloyd's association," respectively.

17 Revised Law

18 Sec. 2051.002. CONSTRUCTION OF CERTAIN LAWS. The following
19 shall be construed and applied independently of any other law that
20 relates to insurance rates and forms or prescribes the duties of the
21 commissioner or the department:

- 22 (1) this chapter;
23 (2) Subchapter D, Chapter 5;
24 (3) Chapter 251, as that chapter relates to workers'
25 compensation insurance;
26 (4) Chapters 255, 426, 2052, and 2053; and
27 (5) Chapter 406A, Labor Code. (V.T.I.C. Art. 5.66
28 (part).)

29 Source Law

30 Art. 5.66. . . . the provisions of this
31 subchapter shall be construed and applied
32 independently of any other law or laws, or parts of
33 laws, having to do with the matter of insurance rates
34 and forms or of fixing the duties of the Board.

35 Revisor's Note

36 V.T.I.C. Article 5.66 refers to "the Board,"

1 meaning the Board of Insurance Commissioners. Other
2 provisions revised in this chapter refer to the State
3 Board of Insurance. Under Chapter 499, Acts of the
4 55th Legislature, Regular Session, 1957,
5 administration of the insurance laws of this state was
6 reorganized and the powers and duties of the Board of
7 Insurance Commissioners were transferred to the State
8 Board of Insurance. Chapter 685, Acts of the 73rd
9 Legislature, Regular Session, 1993, abolished the
10 State Board of Insurance and transferred its functions
11 to the commissioner of insurance and the Texas
12 Department of Insurance. Throughout this chapter,
13 references to the Board of Insurance Commissioners,
14 the State Board of Insurance, and "the board" have been
15 changed appropriately.

16 [Sections 2051.003-2051.050 reserved for expansion]

17 SUBCHAPTER B. COMPENSATION AND EXPENSES

18 Revised Law

19 Sec. 2051.051. LIMITATION ON COMPENSATION AND EXPENSES.
20 The total amount of necessary compensation of experts, clerical
21 personnel, and other department employees, necessary travel
22 expenses, and other expenses necessarily incurred to implement the
23 purposes of the laws referenced in Sections 2051.002(1), (2), (3),
24 (4), and (5) may not exceed the total amount assessed and collected
25 from insurance companies writing workers' compensation insurance
26 in this state. (V.T.I.C. Art. 5.67 (part).)

27 Source Law

28 Art. 5.67. The necessary compensation of
29 experts, the clerical force and other persons employed
30 by the Board to carry out the purposes of this
31 subchapter, and all necessary traveling expenses and
32 such other expenses as may be necessarily incurred in
33 carrying out such provisions [shall be paid]
34 The total amount of all salaries and said other
35 expenses shall not exceed the sum assessed and
36 collected from companies and associations writing
37 workmen's compensation insurance in this State.

1 Revisor's Note

2 V.T.I.C. Article 5.67 requires the comptroller,
3 on the order of the Texas Department of Insurance, to
4 draw warrants to pay certain compensation and
5 expenses. The revised law omits the provision as
6 unnecessary because Chapter 2103, Government Code,
7 provides procedures for expenditures by state
8 agencies, including the department. The omitted law
9 reads:

10 Art. 5.67. [The necessary
11 compensation of experts, the clerical force
12 and other persons employed by the Board to
13 carry out the purposes of this subchapter,
14 and all necessary traveling expenses and
15 such other expenses as may be necessarily
16 incurred in carrying out such provisions]
17 shall be paid by warrants drawn by the
18 Comptroller upon the order of said
19 Board. . . .

20 [Sections 2051.052-2051.100 reserved for expansion]

21 SUBCHAPTER C. POLICYHOLDER DUTIES

22 Revised Law

23 Sec. 2051.101. DISCLOSURE BY POLICYHOLDER REQUIRED. (a) A
24 policyholder shall fully disclose to the policyholder's insurance
25 company:

26 (1) information concerning the policyholder's
27 ownership, change of ownership, operations, or payroll; and

28 (2) the policyholder's records relating to workers'
29 compensation insurance.

30 (b) The commissioner shall adopt rules necessary to
31 implement this section. (V.T.I.C. Art. 5.65B, Secs. (a), (d).)

32 Source Law

33 Art. 5.65B. (a) A policyholder shall make full
34 disclosure to its insurance company of information
35 concerning its true ownership, change of ownership,
36 operations, or payroll and any of its records
37 pertaining to workers' compensation insurance.

38 (d) The board shall promulgate rules necessary
39 to implement this article.

40 [Sections 2051.102-2051.150 reserved for expansion]

1 SUBCHAPTER D. DUTIES AND PROHIBITED ACTS; ENFORCEMENT

2 Revised Law

3 Sec. 2051.151. NOTICE OF CLAIMS INFORMATION TO POLICYHOLDER
4 REQUIRED; ADMINISTRATIVE PENALTY. (a) Except as otherwise
5 provided by Subsection (b), an insurance company that writes
6 workers' compensation insurance in this state shall notify a
7 policyholder of a claim that is filed against the policyholder's
8 policy and, after the initial notice, the company shall notify the
9 policyholder of:

10 (1) any proposal to settle the claim; or

11 (2) on receipt of a written request from the
12 policyholder, any administrative or judicial proceeding relating
13 to the resolution of the claim, including a benefit review
14 conference conducted by the Texas Workers' Compensation
15 Commission.

16 (b) A policyholder may waive the notice required by
17 Subsection (a).

18 (c) An insurance company that writes workers' compensation
19 insurance in this state, on the written request of a policyholder,
20 shall provide to the policyholder:

21 (1) a list of:

22 (A) claims charged against the policy; and

23 (B) payments made and reserves established on
24 each claim; and

25 (2) a statement explaining the effect of claims on
26 premium rates.

27 (d) The insurance company shall provide the information
28 described by Subsection (c) in writing not later than the 30th day
29 after the date the company receives the policyholder's written
30 request for the information. For purposes of this subsection,
31 information is considered to be provided to the policyholder on the
32 date the information is:

33 (1) received by the United States Postal Service; or

34 (2) personally delivered to the policyholder.

1 (e) An insurance company that fails to comply with this
2 section commits a Class D administrative violation under Subtitle
3 A, Title 5, Labor Code. (V.T.I.C. Art. 5.65A.)

4 Source Law

5 Art. 5.65A. (a) A company or association that
6 writes workers' compensation insurance in this state
7 shall notify each policyholder of any claim that is
8 filed against the policy. Thereafter a company shall
9 notify the policyholder of any proposal to settle a
10 claim or, on receipt of a written request from the
11 policyholder, of any administrative or judicial
12 proceeding relating to the resolution of a claim,
13 including a benefit review conference conducted by the
14 Texas Workers' Compensation Commission.

15 (b) Each company or association that writes
16 workers' compensation insurance in this state, on the
17 written request of the policyholder, shall provide the
18 policyholder with a list of claims charged against the
19 policy, payments made and reserves established on each
20 claim, and a statement explaining the effect of claims
21 on premium rates. The company or association shall
22 provide the information to the policyholder in writing
23 not later than the 30th day after the date on which the
24 company or association receives the policyholder's
25 written request for the information. The information
26 is considered to be provided on the date that the
27 information is received by the United States Postal
28 Service or personally delivered.

29 (c) An insurance carrier that fails to comply
30 with this article commits a Class D administrative
31 violation under the Texas Workers' Compensation Act
32 (S.B. No. 1, Acts of the 71st Legislature, 2nd Called
33 Session, 1989).

34 (d) Any policyholder may elect to waive the
35 notification required by Subsection (a) of this
36 article.

37 Revisor's Note

38 (1) Section (c), V.T.I.C. Article 5.65A, refers
39 to an "insurance carrier" that fails to comply with
40 V.T.I.C. Article 5.65A, revised as this section. The
41 term "insurance carrier" as used in the Texas Workers'
42 Compensation Act, Subtitle A, Title 5, Labor Code, is
43 broader than the term "insurance company" as defined
44 for purposes of this chapter in Section 2051.001,
45 which is derived from V.T.I.C. Article 5.63. However,
46 the revised law substitutes a reference to "insurance
47 company" for the reference to "insurance carrier"
48 because the duties prescribed and the sanction
49 authorized by Article 5.65A apply only to insurance

1 companies and for consistency of terminology in this
2 chapter.

3 (2) Section (c), V.T.I.C. Article 5.65A, refers
4 to "the Texas Workers' Compensation Act (S.B. No. 1,
5 Acts of the 71st Legislature, 2nd Called Session,
6 1989)." That Act was originally published as Article
7 8308-1.01 et seq., Vernon's Texas Civil Statutes, and
8 was codified in 1993 as Subtitle A, Title 5, Labor
9 Code. The revised law is drafted accordingly.

10 Revised Law

11 Sec. 2051.152. PROHIBITED ACTS BY PERSON; ADMINISTRATIVE
12 PENALTY. (a) A person commits an administrative violation if the
13 person:

14 (1) to obtain workers' compensation insurance coverage
15 for the person or another person, intentionally or knowingly:

16 (A) makes a false statement;

17 (B) misrepresents or conceals a material fact;

18 (C) makes a false entry in, fabricates, alters,
19 conceals, or destroys a document; or

20 (D) conspires to commit an act listed in
21 Paragraph (A), (B), or (C); or

22 (2) intentionally and knowingly obtains or maintains:

23 (A) workers' compensation insurance coverage
24 from an insurer that is not authorized to engage in business in this
25 state; or

26 (B) alternative coverage from an insurer in
27 violation of this code.

28 (b) An administrative violation under Subsection (a) is
29 punishable by an administrative penalty not to exceed \$5,000
30 assessed in accordance with the procedures established for an
31 administrative violation under Chapter 415, Labor Code.

32 (c) Each day an administrative violation under Subsection
33 (a)(2) occurs or continues is a separate violation. (V.T.I.C.
34 Art. 5.65C, Secs. (a), (b), (f).)

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(f) A person commits an administrative violation if the person knowingly and intentionally obtains or maintains workers' compensation insurance coverage from an insurer that is not authorized to do business in this state or obtains or maintains alternative coverage from an insurer in violation of this code. An administrative violation under this subsection is punishable by an administrative penalty not to exceed \$5,000 assessed in accordance with the procedures established under Article 10, Texas Workers' Compensation Act (Article 8308-10.01 et seq., Vernon's Texas Civil Statutes). Each day of noncompliance is a separate violation.

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Revised Law

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(1) the difference between the premium due and the

1 premium actually charged; and

2 (2) reasonable interest and attorney's fees.

3 (b) For the purposes of this section, "insurer" includes the
4 Texas Mutual Insurance Company. (V.T.I.C. Art. 5.65C, Sec. (d).)

5 Source Law

6 (d) If a policyholder commits an administrative
7 violation under this article and obtains workers'
8 compensation insurance coverage at a premium less than
9 the premium that would have been charged had the
10 policyholder not committed the administrative
11 violation, the policyholder is liable to the insurer
12 for the difference between the premium due and the
13 premium actually charged, plus reasonable interest and
14 reasonable attorney fees. For the purposes of this
15 subsection, "insurer" includes the Texas Mutual
16 Insurance Company.

17 Revised Law

18 Sec. 2051.154. PROHIBITED ACT BY INSURER; ADMINISTRATIVE
19 PENALTY. (a) An insurer commits an administrative violation if the
20 insurer directly or indirectly requires a person to apply for or
21 purchase an insurance policy, other than a workers' compensation
22 insurance policy, as a condition of issuing a workers' compensation
23 insurance policy.

24 (b) An insurer that violates this section is subject to
25 administrative penalties under Chapter 84. (V.T.I.C. Art. 5.65C,
26 Sec. (e).)

27 Source Law

28 (e) An insurer commits an administrative
29 violation if the insurer directly or indirectly
30 requires a person to apply for or purchase a policy of
31 insurance other than workers' compensation insurance
32 as a condition attached to the issuance of a workers'
33 compensation insurance policy by the insurer. An
34 insurer that violates this subsection is subject to
35 the administrative penalties under Article 1.10 of
36 this code.

37 Revisor's Note

38 Section (e), V.T.I.C. Article 5.65C, refers to
39 "administrative penalties under Article 1.10 of this
40 code." The portion of V.T.I.C. Article 1.10 relating
41 to administrative penalties was revised as Section
42 82.052 of this code and authorizes the commissioner of
43 insurance to assess administrative penalties under

Chapter 84 of this code. The revised law substitutes a reference to Chapter 84 accordingly.

Revised Law

Sec. 2051.155. SANCTION OF AGENT REQUIRED. The commissioner shall impose a sanction in accordance with Chapter 82 against an agent who commits an administrative violation under Section 2051.152 or 2051.154. (V.T.I.C. Art. 5.65C, Sec. (c).)

Source Law

(c) The State Board of Insurance shall sanction an agent who commits an administrative violation under this article in accordance with Section 7, Article 1.10 of this code.

Revised Law

Sec. 2051.156. CANCELLATION OF CERTIFICATE OF AUTHORITY REQUIRED. The commissioner shall cancel an insurance company's certificate of authority to engage in the business of workers' compensation insurance in this state on a second conviction of an officer or representative of the company for violating a provision of a law referenced in Section 2051.002(1), (2), (3), (4), or (5) relating to that business. (V.T.I.C. Art. 5.64.)

Source Law

Art. 5.64. The Board shall cancel the license of any insurance company or association of persons to transact workmen's compensation insurance business in this State upon a second conviction of any officer or representative of such company or association for a violation of any provision of this subchapter relating to such business.

Revisor's Note

V.T.I.C. Article 5.64 refers to the "license" of an insurance company to engage in the business of workers' compensation insurance in this state. The revised law substitutes "certificate of authority" for "license" because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 2051.157. PENALTY FOR CERTAIN VIOLATIONS. An officer

1 or other representative of an insurance company is subject to a fine
2 of not less than \$100 or more than \$500 if the officer or other
3 representative violates any provision of the following relating to
4 the company's business:

- 5 (1) Subchapter A or B;
- 6 (2) Section 2051.156 or 2051.201;
- 7 (3) Chapter 426 or 2052;
- 8 (4) Subchapter A, C, or D, Chapter 2053;
- 9 (5) Section 2053.051, 2053.052, 2053.053, or
10 2053.055; or
- 11 (6) Article 5.66. (V.T.I.C. Art. 5.68-1.)

12 Source Law

13 Art. 5.68-1. Any officer or representative of
14 any insurance company or association authorized to
15 write workmen's compensation insurance in this State,
16 who shall violate any provision of the laws relating to
17 such business contained in chapter 10, Title
18 "Insurance" of the Revised Statutes, relating to the
19 State Insurance Commission and such business, shall be
20 fined not less than one hundred nor more than five
21 hundred dollars.

22 Revisor's Note

23 V.T.I.C. Article 5.68-1 refers to "any provision
24 of the laws relating to such business contained in
25 chapter 10, Title 'Insurance' of the Revised Statutes,
26 relating to the State Insurance Commission and such
27 business." Chapter 10, Title "Insurance," consisted
28 of Articles 4878-4918, Vernon's Texas Civil Statutes,
29 which were codified in 1951 in Subchapters C and D,
30 V.T.I.C. Chapter 5. The relevant provisions of those
31 subchapters relating to workers' compensation
32 insurance were codified as V.T.I.C. Articles 5.55,
33 5.56, 5.57, 5.58, 5.59, 5.60, 5.61, 5.62, 5.63, 5.64,
34 5.65, 5.66, and 5.67 and govern rates and forms for
35 workers' compensation insurance and reserves for
36 workers' compensation insurance companies. The
37 revised law is drafted accordingly.

38 In addition, the revised law omits the reference

1 to the State Insurance Commission as unnecessary.
2 Under Chapter 224, Acts of the 40th Legislature,
3 Regular Session, 1927, the functions of the State
4 Insurance Commission were transferred to the Board of
5 Insurance Commissioners. For the reasons stated in
6 the revisor's note to Section 2051.002, those
7 functions are now performed by the commissioner of
8 insurance and the Texas Department of Insurance, but a
9 reference to the commissioner and the department is
10 not necessary when referring to the specified laws.

11 [Sections 2051.158-2051.200 reserved for expansion]

12 SUBCHAPTER E. RULES

13 Revised Law

14 Sec. 2051.201. RULEMAKING AUTHORITY: WORKERS'
15 COMPENSATION INSURANCE. The commissioner may adopt and enforce all
16 reasonable rules as are necessary to carry out the provisions of a
17 law referenced in Section 2051.002(1), (2), (3), (4), or (5).
18 (V.T.I.C. Art. 5.62.)

19 Source Law

20 Art. 5.62. The Board is hereby empowered to make
21 and enforce all such reasonable rules and regulations
22 not inconsistent with the provisions of this
23 subchapter as are necessary to carry out its
24 provisions.

25 Revisor's Note

26 V.T.I.C. Article 5.62 authorizes the Board of
27 Insurance Commissioners, meaning the commissioner of
28 insurance for the reason stated in the revisor's note
29 to Section 2051.002, to "make and enforce" certain
30 "rules and regulations not inconsistent with the
31 provisions of this subchapter," meaning Subchapter D,
32 V.T.I.C. Chapter 5. For consistency with the
33 terminology used in this code and the administrative
34 procedure law, Chapter 2001, Government Code, the
35 revised law substitutes "adopt" for "make." The
36 revised law also omits as unnecessary the reference to

"regulations" because under Section 311.005(5), Government Code (Code Construction Act), a rule is defined to include a regulation, and that definition applies to the revised law. In addition, the revised law omits as unnecessary the reference to "not inconsistent with the provisions of this subchapter" because the commissioner of insurance does not have the authority to adopt rules that are inconsistent with a statute, and an express statement to that effect is unnecessary.

CHAPTER 2052. POLICY PROVISIONS AND FORMS FOR WORKERS' COMPENSATION INSURANCE

Sec. 2052.001. DEFINITION 1002

Sec. 2052.002. STANDARD POLICY FORMS AND UNIFORM POLICY; EXCEPTIONS 1003

Sec. 2052.003. AGREEMENT REQUIRED TO BE CONTAINED IN APPLICATION AND POLICY 1005

Sec. 2052.004. POLICYHOLDER DIVIDENDS 1007

CHAPTER 2052. POLICY PROVISIONS AND FORMS FOR WORKERS' COMPENSATION INSURANCE

Revised Law

Sec. 2052.001. DEFINITION. In this chapter, "insurance company" means a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state. (V.T.I.C. Art. 5.63.)

Source Law

Art. 5.63. The words "Company" and "Association" used in this subchapter mean the Texas Employers Insurance Association, or any stock company, or any mutual company, or any reciprocal, or any interinsurance exchange, or Lloyd's association authorized to write Workmen's Compensation Insurance in this State.

Revisor's Note

(1) V.T.I.C. Article 5.63 defines terms "used in this subchapter," meaning Subchapter D, V.T.I.C.

Chapter 5. The provisions of Subchapter D, Chapter 5, that are revised have been revised in various titles in this code. The revised law substitutes a reference to "this chapter" for the reference to "this subchapter" because the substance of the definitions contained in Article 5.63 is repeated in each of the chapters in which other articles from Subchapter D, V.T.I.C. Chapter 5, are revised and to which the definitions apply.

(2) V.T.I.C. Article 5.63 defines "company" and "association." The revised law substitutes "insurance company" for "company" and "association" for consistency of terms used in this chapter and the Labor Code. Throughout this chapter, references to "company" and "association" have been changed appropriately.

(3) V.T.I.C. Article 5.63 defines "company" and "association" to include the Texas Employers Insurance Association. The Texas Employers Insurance Association was placed in receivership and liquidated in 2004. The revised law omits the reference to the Texas Employers Insurance Association accordingly.

(4) V.T.I.C. Article 5.63 refers to a "mutual company, or any reciprocal, or any interinsurance exchange, or Lloyd's association." For consistency of terminology within this code, the revised law substitutes references to a "mutual insurance company," a "reciprocal or interinsurance exchange," and a "Lloyd's plan" for the references to a "mutual company," "any reciprocal, or any interinsurance exchange," and "Lloyd's association," respectively.

Revised Law

Sec. 2052.002. STANDARD POLICY FORMS AND UNIFORM POLICY; EXCEPTIONS. (a) The commissioner shall prescribe standard policy

1 forms and a uniform policy for workers' compensation insurance.

2 (b) In writing workers' compensation insurance in this
3 state, an insurance company may not use a form other than one
4 prescribed under this section unless the form is an endorsement:

5 (1) appropriate to the company's plan of operation;
6 and

7 (2) submitted to and approved by the department.
8 (V.T.I.C. Arts. 5.56 (part), 5.57 (part).)

9 Source Law

10 Art. 5.56. The Board shall prescribe standard
11 policy forms to be used by all companies or
12 associations writing workmen's compensation insurance
13 in this State. No company or association authorized to
14 write workmen's compensation insurance in this State
15 shall, except as hereinafter provided for, use
16 any . . . policy forms other than those made,
17 established and promulgated and prescribed by the
18 Board.

19 Art. 5.57. The Board shall prescribe a uniform
20 policy for workmen's compensation insurance and no
21 company or association shall thereafter use any other
22 form in writing workmen's compensation insurance in
23 this State, provided that any company or association
24 may use any form of endorsement appropriate to its plan
25 of operation, if such endorsement shall be first
26 submitted to and approved by the Board, and

27 Revisor's Note

28 (1) V.T.I.C. Articles 5.56 and 5.57 refer to the
29 "Board," meaning the Board of Insurance Commissioners.
30 Under Chapter 499, Acts of the 55th Legislature,
31 Regular Session, 1957, administration of the insurance
32 laws of this state was reorganized and the powers and
33 duties of the Board of Insurance Commissioners were
34 transferred to the State Board of Insurance. Chapter
35 685, Acts of the 73rd Legislature, Regular Session,
36 1993, abolished the State Board of Insurance and
37 transferred its functions to the commissioner of
38 insurance and the Texas Department of Insurance.
39 Throughout this chapter, references to the Board of
40 Insurance Commissioners have been changed
41 appropriately.

42 (2) V.T.I.C. Article 5.56 refers to the use of

1 forms "made, established and promulgated and
2 prescribed" by the department. The revised law omits
3 the reference to "made, established and promulgated"
4 as unnecessary because, with regard to forms, it is
5 sufficient and appropriate to refer to forms
6 "prescribed" by the department.

7 (3) V.T.I.C. Article 5.56 requires certain
8 insurance companies to use a standard policy form in
9 writing workers' compensation insurance "except as
10 hereinafter provided for." The text of Article 5.56
11 was originally enacted by Section 2, Chapter 182,
12 General Laws, Acts of the 38th Legislature, Regular
13 Session, 1923, and subsequent text of that act
14 provided two exceptions to the requirement that the
15 specified insurance companies use the standard policy
16 form. Section 4 of the act authorized an insurance
17 company to continue using previously filed and
18 approved forms until the standard policy form was
19 prescribed, and Section 8 of the act, which was
20 codified in 1951 as Article 5.57, Insurance Code,
21 authorized an insurance company to use a form of
22 endorsement appropriate to the company's plan of
23 operation under certain circumstances. The revised
24 law omits the quoted phrase as unnecessary because the
25 exception provided by Section 4 of the act to which the
26 phrase refers is executed, and the exception provided
27 by Section 8 of the act to which the phrase refers is
28 incorporated in the text of the revised law.

29 Revised Law

30 Sec. 2052.003. AGREEMENT REQUIRED TO BE CONTAINED IN
31 APPLICATION AND POLICY. (a) A contract or other agreement with
32 respect to workers' compensation insurance coverage that is not
33 contained in the application and policy required by this chapter
34 violates this subtitle and is void.

1 (b) An insurance company that uses a contract or other
2 agreement described by Subsection (a) engages in conduct that
3 constitutes sufficient grounds for the revocation of the company's
4 certificate of authority to write workers' compensation insurance
5 in this state. (V.T.I.C. Art. 5.57 (part).)

6 Source Law

7 Art. 5.57. . . . any contract or agreement not
8 written into the application and policy shall be void
9 and of no effect and in violation of the provisions of
10 this subchapter, and shall be sufficient cause for
11 revocation of license to write workmen's compensation
12 insurance within this State.

13 Revisor's Note

14 (1) V.T.I.C. Article 5.57 refers to an agreement
15 that is "void and of no effect." The revised law omits
16 the reference to "of no effect" as unnecessary because
17 the phrase is included in the meaning of "void."

18 (2) V.T.I.C. Article 5.57 provides that certain
19 contracts and other agreements with respect to
20 workers' compensation insurance coverage violate "this
21 subchapter," meaning Subchapter D, V.T.I.C. Chapter 5.
22 The relevant provisions of Subchapter D, Chapter 5,
23 are revised in Subtitle E, Title 10, of this code,
24 which includes this chapter. Subtitle E also includes
25 provisions derived from Subchapter G, V.T.I.C. Chapter
26 5, that relate to the Texas Mutual Insurance Company
27 and do not apply to workers' compensation insurance
28 policy provisions or violations generally.
29 Accordingly, the revised law substitutes a reference
30 to "this subtitle" for the reference to "this
31 subchapter."

32 (3) V.T.I.C. Article 5.57 refers to the
33 revocation of a "license" to write workers'
34 compensation insurance in this state. The revised law
35 substitutes "certificate of authority" for "license"
36 because "certificate of authority" is the term used

1 throughout this code in relation to an entity's
2 authority to engage in business.

3 Revised Law

4 Sec. 2052.004. POLICYHOLDER DIVIDENDS. (a) Subject to
5 Subsections (b) and (c), this subtitle and Article 5.66 may not be
6 construed to prohibit an insurance company, including the Texas
7 Mutual Insurance Company, from issuing participating policies.

8 (b) A policyholder dividend under a workers' compensation
9 insurance policy:

10 (1) does not take effect until approved by the
11 department; and

12 (2) may not be approved by the department until the
13 insurance company provides adequate reserves.

14 (c) For purposes of Subsection (b), reserves must be
15 computed on the same basis for all classes of insurance companies
16 operating under this subtitle and Article 5.66. (V.T.I.C. Art.
17 5.60, Sec. (c).)

18 Source Law

19 (c) This subchapter may not be construed to
20 prohibit any stock company, mutual company, including
21 the Texas Mutual Insurance Company, reciprocal or
22 interinsurance exchange, or Lloyd's plan from issuing
23 participating policies; however, a dividend to
24 policyholders under Subtitle A, Title 5, Labor Code,
25 may not take effect until approved by the department.
26 Such a dividend may not be approved until adequate
27 reserves have been provided, those reserves to be
28 computed on the same basis for all classes of companies
29 operating under this subchapter.

30 Revisor's Note

31 (1) Section (c), V.T.I.C. Article 5.60,
32 provides that "[t]his subchapter," meaning Subchapter
33 D, V.T.I.C. Chapter 5, may not be construed to prohibit
34 certain insurance policies and refers to insurance
35 companies operating under "this subchapter." The
36 relevant provisions of Subchapter D, Chapter 5, are
37 V.T.I.C. Article 5.66 and those articles that are
38 revised in Subtitle E, Title 10, of this code, which
39 includes this chapter. Subtitle E also includes

1 provisions derived from Subchapter G, V.T.I.C. Chapter
2 5, that relate to the Texas Mutual Insurance Company
3 and could not be construed to prohibit the specified
4 insurance policies. In addition, V.T.I.C. Article
5 5.63, revised in this chapter as Section 2052.001,
6 defines "insurance company" in part as a mutual
7 insurance company, which includes the Texas Mutual
8 Insurance Company. Accordingly, the revised law
9 substitutes references to "this subtitle and Article
10 5.66" for the references to "this subchapter."

11 (2) Section (c), V.T.I.C. Article 5.60, refers
12 to a dividend to policyholders under "Subtitle A,
13 Title 5, Labor Code." The revised law substitutes a
14 reference to a policyholder dividend under "a workers'
15 compensation insurance policy" because it is clear
16 from the context that the reference to Subtitle A,
17 Title 5, Labor Code, was intended to refer to that kind
18 of policy. Subtitle A, Title 5, Labor Code, applies to
19 and describes workers' compensation insurance policies
20 generally, but does not specifically authorize an
21 insurance company to issue a dividend to a
22 policyholder under that kind of policy.

23 CHAPTER 2053. RATES FOR WORKERS' COMPENSATION INSURANCE

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9 CHAPTER 2053. RATES FOR WORKERS' COMPENSATION INSURANCE

10 SUBCHAPTER A. RATE FILINGS

11 Revised Law

12 Sec. 2053.001. DEFINITIONS. In this subchapter:

13 (1) "Filer" means an insurance company that files

14 rates, prospective loss costs, or supplementary rating information

15 under this subchapter.

16 (2) "Insurance company" means a person authorized to

17 engage in the business of workers' compensation insurance in this

18 state. The term includes the Texas Mutual Insurance Company.

19 (3) "Prospective loss cost" means that portion of a

20 rate that:

21 (A) does not include a provision for expenses or

22 profit, other than loss adjustment expenses; and

23 (B) is based on historical aggregate losses and

24 loss adjustment expenses projected by development to the ultimate

25 value of those losses and expenses and projected through trending

26 to a future point in time.

27 (4) "Rate" means the cost of workers' compensation

28 insurance per exposure unit, whether expressed as a single number

29 or as a prospective loss cost, adjusted to account for the treatment

30 of expenses, profit, and individual insurance company variation in

31 loss experience, before applying individual risk variations based

32 on loss or expense considerations. The term does not include a

33 minimum premium.

34 (5) "Supplementary rating information" means any

1 manual, rating plan or schedule, plan of rules, rating rule,
2 classification system, territory code or description, or other
3 similar information required to determine the applicable premium
4 for an insured. The term includes increased limits factors,
5 classification relativities, deductible relativities, and other
6 similar factors and relativities.

7 (6) "Supporting information" means:

8 (A) the experience and judgment of the filer and
9 the experience or information of other insurance companies;

10 (B) the interpretation of any other information
11 on which the filer relied;

12 (C) a description of methods used in making a
13 rate; and

14 (D) any other information the department
15 requires to be filed. (V.T.I.C. Art. 5.55, Secs. 1(1), (2), (3),
16 (4), (6), (7).)

17 Source Law

18 Art. 5.55

19 Sec. 1. In this article:

20 (1) "Filer" means an insurer that files
21 rates, prospective loss costs, or supplementary rating
22 information under this article.

23 (2) "Insurer" means a person authorized
24 and admitted by the Texas Department of Insurance to do
25 insurance business in this state under a certificate
26 of authority that includes authorization to write
27 workers' compensation insurance. The term includes
28 the Texas Mutual Insurance Company.

29 (3) "Prospective loss cost" means that
30 portion of a rate that does not include provisions for
31 expenses or profit, other than loss adjustment
32 expenses, and that is based on historical aggregate
33 losses and loss adjustment expenses projected by
34 development to their ultimate value and through
35 trending to a future point in time.

36 (4) "Rate" means the cost of workers'
37 compensation insurance per exposure unit, whether
38 expressed as a single number or as a prospective loss
39 cost, with an adjustment to account for the treatment
40 of expenses, profit, and individual insurer variation
41 in loss experience, before any application of
42 individual risk variations based on loss or expense
43 considerations. The term does not include a minimum
44 premium.

45 (6) "Supplementary rating information"
46 means any manual, rating schedule, plan of rules,
47 rating rules, classification systems, territory codes
48 and descriptions, rating plans, and other similar
49 information required to determine the applicable

1 premium for an insured. The term includes factors and
2 relativities, such as increased limits factors,
3 classification relativities, deductible relativities,
4 or other similar factors.

5 (7) "Supporting information" means:

6 (A) the experience and judgment of
7 the filer and the experience or information of other
8 insurers;

9 (B) the interpretation of any other
10 information relied on by the filer;

11 (C) descriptions of methods used in
12 making the rates; and

13 (D) any other information required by
14 the department to be filed.

15 Revisor's Note

16 (1) Section 1(2), V.T.I.C. Article 5.55,
17 defines "insurer." Throughout this chapter, the
18 revised law substitutes "insurance company" for
19 "insurer" for consistency with the terminology used in
20 the Labor Code with respect to workers' compensation
21 insurance.

22 (2) Section 1(2), V.T.I.C. Article 5.55, refers
23 to a person "authorized and admitted by the Texas
24 Department of Insurance to do insurance business in
25 this state." The revised law omits the reference to a
26 person being "admitted" as unnecessary because a
27 person who is authorized to engage in the business of
28 insurance in this state necessarily has been admitted
29 to engage in that business in this state. In addition,
30 the revised law omits the reference to the department
31 as unnecessary because the department is the only
32 entity that authorizes a person to engage in the
33 business of insurance in this state.

34 Revised Law

35 Sec. 2053.002. RATE STANDARDS. (a) In setting rates, an
36 insurance company shall consider:

37 (1) past and prospective loss cost experience;

38 (2) operation expenses;

39 (3) investment income;

40 (4) a reasonable margin for profit and contingencies;

41 and

1 (5) any other relevant factor.

2 (b) A rate may not be excessive, inadequate, or unfairly
3 discriminatory.

4 (c) An insurance company may:

5 (1) group risks by classification to establish rates
6 and minimum premiums; and

7 (2) modify classification rates to produce rates for
8 individual risks in accordance with rating plans that establish
9 standards for measuring variations in those risks on the basis of
10 any factor listed in Subsection (a).

11 (d) In setting rates that apply only to policyholders in
12 this state, an insurance company shall use available premium, loss,
13 claim, and exposure information from this state to the full extent
14 that the information is actuarially credible. The insurance
15 company may use experience from outside this state as necessary to
16 supplement information from this state that is not actuarially
17 credible. (V.T.I.C. Art. 5.55, Secs. 2(b), (c), (d), (e).)

18 Source Law

19 (b) In setting rates, an insurer shall consider:
20 (1) past and prospective loss cost
21 experience;
22 (2) operation expenses;
23 (3) investment income;
24 (4) a reasonable margin for profit and
25 contingencies; and
26 (5) any other relevant factors.

27 (c) The insurer may group risks by
28 classifications for the establishment of rates and
29 minimum premiums and may modify classification rates
30 to produce rates for individual risks in accordance
31 with rating plans that establish standards for
32 measuring variations in those risks on the basis of any
33 factor listed in Subsection (b) of this section.

34 (d) Rates may not be excessive, inadequate, or
35 unfairly discriminatory.

36 (e) In setting rates applicable solely to
37 policyholders in this state, an insurer shall use
38 available premium, loss, claim, and exposure
39 information from this state to the full extent of the
40 actuarial credibility of that information. The
41 insurer may use experience from outside this state as
42 necessary to supplement information from this state
43 that is not actuarially credible.

44 Revisor's Note

45 Section 2(a), V.T.I.C. Article 5.55, states that
46 rates established under Article 5.55 must be made in

1 accordance with the provisions of Section 2 of that
2 article, which are revised as this section. The
3 revised law omits Section 2(a) as unnecessary because
4 the other provisions of Section 2 apply by their own
5 terms to a rate established under Article 5.55. The
6 omitted law reads:

7 Sec. 2. (a) Rates under this article
8 shall be made in accordance with the
9 provisions of this section.

10 Revised Law

11 Sec. 2053.003. RATE FILING AND SUPPORTING INFORMATION. (a)
12 Each insurance company shall file with the department all rates,
13 supplementary rating information, and reasonable and pertinent
14 supporting information for risks written in this state.

15 (b) An insurance company may not make a filing described by
16 Subsection (a) more frequently than once every six months.
17 (V.T.I.C. Art. 5.55, Sec. 3(a) (part).)

18 Source Law

19 Sec. 3. (a) Each insurer shall file with the
20 Texas Department of Insurance all rates, supplementary
21 rating information, and reasonable and pertinent
22 supporting information for risks written in this
23 state. An insurer may not make such filing more
24 frequently than every six months. . . .

25 Revisor's Note

26 Section 3(a), V.T.I.C. Article 5.55, refers to
27 the Texas Department of Insurance. The revised law
28 substitutes "department" for "Texas Department of
29 Insurance" because Section 31.001 of this code
30 contains a definition of "department" that applies to
31 this chapter. Throughout this chapter, references to
32 the Texas Department of Insurance have been changed
33 appropriately.

34 Revised Law

35 Sec. 2053.004. PUBLIC INSPECTION OF INFORMATION. Each
36 filing made, including any supporting information filed, under this
37 subchapter is open to public inspection as of the date the filing is

1 made. (V.T.I.C. Art. 5.55, Sec. 4.)

2 Source Law

3 Sec. 4. Each filing and any supporting
4 information filed under this article is open to public
5 inspection as of the date of the filing.

6 Revised Law

7 Sec. 2053.005. EFFECTIVE DATE OF RATE; HEARING. (a) A
8 filer shall designate the date a rate proposed in a filing made
9 under Section 2053.003 is to take effect. Subject to Subsections
10 (b)-(d), the rate does not take effect until the department
11 receives all necessary information required for the filing.

12 (b) A filing made under Section 2053.003 takes effect on the
13 date designated by the filer under Subsection (a) unless the
14 department, not later than the 30th day after the date the
15 department receives the filing, notifies the filer that the filing
16 is missing specific required information. The filer must provide
17 the missing information not later than the 30th day after the date
18 the filer is notified under this subsection.

19 (c) If the filer in good faith believes that information
20 requested under Subsection (b) has already been provided to the
21 department, the filer may request a hearing. The commissioner
22 shall hold the hearing not later than the 30th day after the date
23 the department receives the request for a hearing.

24 (d) The commissioner shall issue an order not later than the
25 30th day after the date of the hearing under Subsection (c). If the
26 commissioner determines that the filing is still missing required
27 information, the commissioner shall specify in the order the
28 information that is missing. (V.T.I.C. Art. 5.55, Secs. 3(a)
29 (part), (b).)

30 Source Law

31 (a) . . . Subject to Subsection (b) of this
32 section, a rate proposed in a filing made under this
33 subsection does not take effect until all necessary
34 information required for the filing is received by the
35 department.

36 (b) A filer shall designate the date on which
37 the filing is to take effect. The filing takes effect
38 on the designated date unless the board, not later than
39 the 30th day after the date of the receipt of the

1 filing, advises the filer of what specific information
2 that is required for the filing has not been included
3 in the filing. The filer must provide the missing
4 information not later than the 30th day after the date
5 on which the filer is notified by the board of the
6 missing information. If the filer in good faith
7 believes that the requested information has already
8 been provided, the filer may request a hearing. The
9 board shall hold the hearing not later than the 30th
10 day after the receipt of the hearing request from the
11 filer. The board shall issue a decision not later than
12 the 30th day after the date of the hearing. If the
13 board determines that necessary information is still
14 missing, the board shall specify in the decision the
15 information that was not included in the filing.

16 Revisor's Note

17 Section 3(b), V.T.I.C. Article 5.55, refers to
18 the "board," meaning the Board of Insurance
19 Commissioners or the State Board of Insurance. Under
20 Chapter 499, Acts of the 55th Legislature, Regular
21 Session, 1957, administration of the insurance laws of
22 this state and the powers and duties of the Board of
23 Insurance Commissioners were transferred to the State
24 Board of Insurance. Chapter 685, Acts of the 73rd
25 Legislature, Regular Session, 1993, abolished the
26 State Board of Insurance and transferred that board's
27 functions to the commissioner of insurance and the
28 Texas Department of Insurance. Throughout this
29 chapter, references to the Board of Insurance
30 Commissioners and State Board of Insurance have been
31 changed appropriately.

32 Revised Law

33 Sec. 2053.006. DISAPPROVAL OF RATE FILING; HEARING. (a)
34 The commissioner shall disapprove a rate filing made under Section
35 2053.003 if the commissioner determines that the filing does not
36 meet the standards established under this subchapter.

37 (b) If the commissioner disapproves a rate filing, the
38 commissioner shall issue an order specifying in what respects the
39 filing fails to meet the requirements of this subchapter.

40 (c) A filer whose rate filing is disapproved is entitled to
41 a hearing on written request made to the department not later than

1 the 30th day after the date the order disapproving the filing takes
2 effect. (V.T.I.C. Art. 5.55, Sec. 5.)

3 Source Law

4 Sec. 5. (a) The State Board of Insurance shall
5 disapprove a rate filing if the board determines that
6 the rate filing made under Section 3 of this article
7 does not meet the standards established under this
8 article.

9 (b) If the board disapproves a rate filing, the
10 board shall issue an order specifying in what respects
11 the rate filing fails to meet the requirements of this
12 article. The filer is entitled to a hearing on written
13 request made to the board not later than the 30th day
14 after the effective date of the disapproval order.

15 Revised Law

16 Sec. 2053.007. DISAPPROVAL OF RATE; HEARING. (a) The
17 commissioner may issue an order after a hearing disapproving a rate
18 that is in effect. The commissioner must provide the insurance
19 company that filed the rate written notice of the hearing not later
20 than the 10th day before the date of the hearing.

21 (b) The commissioner shall issue an order disapproving a
22 rate under Subsection (a) not later than the 15th day after the
23 close of the hearing. The order must:

24 (1) specify in what respects the rate fails to meet the
25 requirements of this subchapter; and

26 (2) state the date further use of the rate is
27 prohibited.

28 (c) An order issued under this section does not affect an
29 insurance policy made or issued in accordance with this code before
30 the expiration of the period stated in the order. (V.T.I.C. Art.
31 5.55, Sec. 6.)

32 Source Law

33 Sec. 6. (a) The State Board of Insurance may
34 issue a disapproval order only after notice and
35 hearing. The board must provide at least 10 days'
36 written notice to the insurer that made the rate
37 filing.

38 (b) The disapproval order must be issued not
39 later than the 15th day after the close of a hearing
40 and must specify how the rate fails to meet the
41 requirements of this article. The disapproval order
42 must state the date on which the further use of that
43 rate is prohibited. A disapproval order does not
44 affect a policy made or issued in accordance with this
45 code before the expiration of the period established

1 in the order.

2 Revised Law

3 Sec. 2053.008. EFFECT OF DISAPPROVAL ORDER. (a) If a
4 workers' compensation insurance policy is issued and the
5 commissioner subsequently disapproves the rate or filing that
6 governs the premium charged on the policy, the policyholder may:

7 (1) continue the policy at the original rate;

8 (2) cancel the policy without penalty; or

9 (3) enter into an agreement with the insurance company
10 issuing the policy to amend the policy to reflect the premium that
11 would have been charged based on the insurance company's most
12 recently approved rate.

13 (b) An amendment under Subsection (a)(3) may not take effect
14 before the date further use of the rate is prohibited under an order
15 issued under Section 2053.007. (V.T.I.C. Art. 5.55, Sec. 7(a).)

16 Source Law

17 Sec. 7. (a) If a policy is issued and the board
18 subsequently disapproves the rate or filing that
19 governs the premium charged on the policy:

20 (1) the policyholder may continue the
21 policy at the original rate;

22 (2) the policyholder may cancel the policy
23 without penalty; or

24 (3) the policyholder and the insurer may
25 agree to amend the policy to reflect the premium that
26 would have been charged based on the insurer's most
27 recently approved rate; the amendment may not take
28 effect before the date on which further use of the rate
29 is prohibited under the disapproval order.

30 Revised Law

31 Sec. 2053.009. GRIEVANCE. (a) The office of public
32 insurance counsel or an insured who is aggrieved with respect to a
33 filing made under Section 2053.003 that is in effect may apply to
34 the department in writing for a hearing on the filing. The
35 application must specify the grounds for the applicant's grievance.

36 (b) The commissioner shall hold a hearing on an application
37 filed under Subsection (a) not later than the 30th day after the
38 date the department receives the application if the department
39 determines that:

40 (1) the application is made in good faith;

(2) the applicant would be aggrieved as alleged if the grounds specified in the application were established; and

(3) the grounds specified in the application otherwise justify holding the hearing.

(c) The department shall provide written notice of a hearing under Subsection (b) to the applicant and to each insurance company that made the filing not later than the 10th day before the date of the hearing. The notice must specify:

(1) which of the grounds specified in the application are in question; and

(2) whether the insurance company's entire filing will be considered at the hearing or whether the hearing is limited to consideration of the grounds specified in the application.

(d) If, after the hearing, the commissioner determines that the filing does not meet the requirements of this subchapter, the commissioner shall issue an order specifying:

(1) in what respects the filing fails to meet those requirements;

(2) the date the filing is no longer in effect, which must be within a reasonable period that is not less than 60 days after the date the order is issued; and

(3) whether the order applies with respect to all insureds affected by the filing or only with respect to the applicant, if the applicant was an aggrieved insured.

(e) The department shall send copies of the order issued under Subsection (d) to the applicant and each affected insurance company.

(f) An order issued under Subsection (d) does not affect an insurance policy or contract made or issued before the expiration of the period stated in the order. (V.T.I.C. Art. 5.55, Secs. 3(c), (d).)

Source Law

(c) An insured that is aggrieved with respect to any filing in effect or the office of public insurance counsel may make a written application to the board for

1 a hearing on the filing. The application must specify
2 the grounds on which the applicant bases the
3 grievance. If the board finds that the application is
4 made in good faith, that the applicant would be so
5 aggrieved if the grounds in the application are
6 established, and that those grounds otherwise justify
7 holding the hearing, the board shall hold a hearing not
8 later than the 30th day after the date of receipt of
9 the application. The board must give at least 10 days'
10 written notice to the applicant and to each insurer
11 that made the filing in question. The notice must
12 specify which of the grounds in the application are in
13 question and whether the hearing is limited to
14 consideration of the specific application of the
15 aggrieved insured or to the entire filing.

16 (d) If, after the hearing, the board finds that
17 the filing does not meet the requirements of this
18 article, the board shall issue an order specifying how
19 the filing fails to meet the requirements of this
20 article and stating the date on which, within a
21 reasonable period of not less than 60 days after the
22 order date, the filing is no longer in effect. The
23 board order must specify whether the order applies
24 only to the applicant or to all insureds affected by
25 the filing. The board shall send copies of the order
26 to the applicant and to each affected insurer. An
27 order issued under this subsection does not affect a
28 contract or policy made or issued before the
29 expiration of the period established in the order.

30 Revisor's Note

31 Section 3(d), V.T.I.C. Article 5.55, states that
32 an order issued by the commissioner of insurance under
33 that section stating that a filing made under Article
34 5.55 does not comply with that article must also state
35 whether the order applies only with respect to the
36 applicant who filed the grievance on which the order is
37 based or with respect to all insureds affected by the
38 filing. Under Section 3(c), Article 5.55, revised in
39 this section, the applicant could be either an
40 aggrieved insured or the office of public insurance
41 counsel. It is clear from the context of Section 3(d)
42 that the commissioner's order could apply to the
43 aggrieved insured or to all insureds, but not to the
44 office of public insurance counsel. The revised law is
45 drafted accordingly.

46 Revised Law

47 Sec. 2053.010. ADMINISTRATIVE PENALTY. (a) The
48 commissioner may assess an administrative penalty against an

1 insurance company if the commissioner determines, based on a
2 pattern of charges for premiums, that the company is consistently
3 overcharging or undercharging the company's policyholders for
4 workers' compensation insurance.

5 (b) An administrative penalty under this section must be:

6 (1) assessed in accordance with Section 415.021, Labor
7 Code; and

8 (2) set by the commissioner in an amount reasonable
9 and necessary to deter overcharging or undercharging of
10 policyholders. (V.T.I.C. Art. 5.55, Sec. 7(b).)

11 Source Law

12 (b) If the board determines, based on a pattern
13 of charges for premiums, that an insurer is
14 consistently overcharging or undercharging, the board
15 may assess an administrative penalty. The penalty
16 shall be assessed in accordance with Article 10, Texas
17 Workers' Compensation Act (Article 8308-10.01 et seq.,
18 Vernon's Texas Civil Statutes), and set by the board in
19 an amount reasonable and necessary to deter the
20 overcharging or undercharging of policyholders.

21 Revisor's Note

22 Section 7(b), V.T.I.C. Article 5.55, refers to
23 Article 10, Texas Workers' Compensation Act (Article
24 8308-10.01 et seq., Vernon's Texas Civil Statutes).
25 The portion of that statute relating to the assessment
26 of an administrative penalty was codified in 1993 as
27 Section 415.021, Labor Code. The revised law is
28 drafted accordingly.

29 [Sections 2053.011-2053.050 reserved for expansion]

30 SUBCHAPTER B. RATE ADMINISTRATION

31 Revised Law

32 Sec. 2053.051. HAZARD CLASSIFICATION SYSTEM. (a) For
33 workers' compensation insurance, the department shall:

34 (1) determine hazards by class; and

35 (2) establish classification relativities applicable
36 to an employer's payroll in each of the classes at levels adequate
37 to the risks to which the relativities apply.

38 (b) The classification relativities established under

1 Subsection (a)(2):

2 (1) must be designed to encourage safety;

3 (2) may be territorially based; and

4 (3) may reflect a difference in losses between
5 employers of high wage earners and employers of low wage earners
6 within the same class.

7 (c) The department shall revise the classification system
8 at least once every five years. (V.T.I.C. Art. 5.60, Secs. (a), (d)
9 (part).)

10 Source Law

11 Art. 5.60. (a) For workers' compensation
12 insurance, the Board shall determine hazards by
13 classes and fix classification relativities
14 applicable to the payroll in each of the classes as
15 shall be adequate to the risks to which they apply.
16 The relativities:

17 (1) shall be designed to encourage safety;

18 (2) may be territorially based; and

19 (3) may reflect differences in losses
20 between employers of high and low wage earners within
21 the same class.

22 (d) The Board shall revise the classification
23 system and . . . not later than March 1, 1993, and
24 subsequently shall revise the system and . . . at
25 least once every five years.

26 Revisor's Note

27 Section (d), V.T.I.C. Article 5.60, directs the
28 "Board," meaning the Texas Department of Insurance for
29 the reason stated in the revisor's note to Section
30 2053.005, to revise the classification system
31 established under Section (a), V.T.I.C. Article 5.60,
32 "not later than March 1, 1993," and subsequently at
33 least once every five years. The revised law omits the
34 reference to "not later than March 1, 1993," as
35 executed.

36 Revised Law

37 Sec. 2053.052. EXPERIENCE RATING PLAN. (a) The
38 commissioner shall adopt a uniform experience rating plan for
39 workers' compensation insurance. The plan must:

40 (1) encourage accident prevention; and

1 (2) account for:

2 (A) the peculiar hazard and experience of
3 individual risks, past and prospective, inside and outside this
4 state; and

5 (B) any other relevant factor.

6 (b) The commissioner shall revise the rating plan at least
7 once every five years.

8 (c) The commissioner may adopt reasonable rules and plans
9 requiring the interchange of loss experience necessary for the
10 application of the rating plan. (V.T.I.C. Art. 5.58, Sec. (h); Art.
11 5.60, Secs. (b), (d) (part).)

12 Source Law

13 [Art. 5.58]

14 (h) Interchange of Rating Plan Data. Reasonable
15 rules and plans may be promulgated by the commissioner
16 after due consideration, requiring the interchange of
17 loss experience necessary for the application of
18 rating plans promulgated by the commissioner under
19 this subchapter.

20 [Art. 5.60]

21 (b) The Board shall adopt a uniform experience
22 rating plan. The rating plan shall encourage the
23 prevention of accidents and consider the peculiar
24 hazard and experience of individual risks, past and
25 prospective, within and outside this state, and all
26 other relevant factors.

27 (d) The Board shall revise the . . . rating
28 plans not later than March 1, 1993, and subsequently
29 shall revise the . . . plans at least once every five
30 years.

31 Revisor's Note

32 (1) Section (h), V.T.I.C. Article 5.58, states
33 that the commissioner of insurance may adopt
34 reasonable rules and plans "after due consideration."
35 The revised law omits "after due consideration" as
36 unnecessary because the requirement that a rule or a
37 plan be reasonable implies that the commissioner will
38 give the rule or plan due consideration before
39 adopting that rule or plan.

40 (2) Section (h), V.T.I.C. Article 5.58, refers
41 to the rating plans adopted by the commissioner of

1 insurance under "this subchapter," meaning Subchapter
2 D, V.T.I.C. Chapter 5. Subchapter D, Chapter 5, is
3 revised in various chapters in this code. The portions
4 of Subchapter D, Chapter 5, relating to the adoption of
5 rating plans are in Section (b), V.T.I.C. Article
6 5.60, which is revised in this section. The revised
7 law is drafted accordingly.

8 (3) Section (d), V.T.I.C. Article 5.60, directs
9 the "Board," meaning the commissioner of insurance for
10 the reason stated in the revisor's note to Section
11 2053.005, to revise the rating plan established under
12 Section (b), V.T.I.C. Article 5.60, "not later than
13 March 1, 1993," and subsequently at least once every
14 five years. The revised law omits the reference to
15 "not later than March 1, 1993," as executed.

16 Revised Law

17 Sec. 2053.053. USE OF HAZARD CLASSIFICATIONS REQUIRED. A
18 stock company, mutual insurance company, reciprocal or
19 interinsurance exchange, or Lloyd's plan authorized to engage in
20 the business of workers' compensation insurance in this state may
21 not use hazard classifications other than the classifications
22 established by the department. (V.T.I.C. Arts. 5.56 (part), 5.63.)

23 Source Law

24 Art. 5.56. . . . No company or association
25 authorized to write workmen's compensation insurance
26 in this State shall . . . use any classifications of
27 hazards, rates of premium, or . . . other than those
28 made, established and promulgated and prescribed by
29 the Board.

30 Art. 5.63. The words "Company" and
31 "Association" used in this subchapter mean the Texas
32 Employers Insurance Association, or any stock company,
33 or any mutual company, or any reciprocal, or any
34 interinsurance exchange, or Lloyd's association
35 authorized to write Workmen's Compensation Insurance
36 in this State.

37 Revisor's Note

38 (1) V.T.I.C. Article 5.56 refers to the use of
39 "classifications of hazards, [or] rates of premium

1 . . . made, established and promulgated and
2 prescribed." The revised law substitutes a reference
3 to "classifications established" for the quoted phrase
4 with respect to hazard classifications for consistency
5 of terminology in this code. In addition, the revised
6 law omits the quoted language with respect to premium
7 rates as impliedly repealed by Article 18, Chapter 12,
8 Acts of the 72nd Legislature, 2nd Called Session,
9 1991, under which the legislature abolished the
10 authority of the commissioner of insurance to adopt
11 workers' compensation insurance rates and amended
12 V.T.I.C. Article 5.55, revised in this chapter as
13 Subchapter A, to provide for the filing of rates by
14 workers' compensation insurance companies and the use
15 of those rates unless they are disapproved.

16 (2) V.T.I.C. Article 5.63 defines terms "used in
17 this subchapter," meaning Subchapter D, V.T.I.C.
18 Chapter 5, which includes V.T.I.C. Article 5.56 and
19 other articles revised in this chapter. The revised
20 law incorporates the substance of the definitions or
21 applies definitions derived from Article 5.63 to each
22 provision in this chapter that is derived from
23 articles to which the definitions apply. In addition,
24 the substance of the definitions contained in Article
25 5.63 is repeated in each of the chapters of this
26 subtitle in which other articles from Subchapter D,
27 V.T.I.C. Chapter 5, are revised.

28 (3) V.T.I.C. Article 5.63 defines "company" and
29 "association." The revised law substitutes "insurance
30 company" for "company" and "association" for the
31 reason stated in Revisor's Note (1) to Section
32 2053.001. Throughout this chapter, references to
33 "company" and "association" have been changed
34 appropriately.

1 (4) V.T.I.C. Article 5.63 defines "company" and
2 "association" to include the Texas Employers Insurance
3 Association. The Texas Employers Insurance
4 Association was placed in receivership and liquidated
5 in 2004. Throughout this chapter, the revised law
6 omits references to the Texas Employers Insurance
7 Association accordingly.

8 (5) V.T.I.C. Article 5.63 refers to a "mutual
9 company, or any reciprocal, or any interinsurance
10 exchange, or Lloyd's association." For consistency of
11 terminology within this code, the revised law
12 throughout this chapter substitutes references to a
13 "mutual insurance company," a "reciprocal or
14 interinsurance exchange," and a "Lloyd's plan" for the
15 references to a "mutual company," "any reciprocal, or
16 any interinsurance exchange," and "Lloyd's
17 association," respectively.

18 Revised Law

19 Sec. 2053.054. USE OF INCURRED CLAIMS EXPERIENCE IN FUTURE
20 RATINGS REQUIRED. (a) Regardless of a change in a policyholder's
21 ownership, control, management, or operations, incurred claims
22 experience must be used in future ratings to ensure that an employer
23 does not evade an unfavorable or high-cost experience.

24 (b) On application by an affected party, the department may
25 modify a rating under Subsection (a) on proof that a change in a
26 policyholder's management or operations is clearly designed to
27 result in a probable reduction of the insured's loss experience.

28 (c) The commissioner shall adopt rules necessary to
29 implement this section. (V.T.I.C. Art. 5.65B, Secs. (a) (part),
30 (b), (c), (d).)

31 Source Law

32 Art. 5.65B. (a) A policyholder [shall make full
33 disclosure . . . concerning] its true ownership,
34 change of ownership, operations, or payroll and
35
36 (b) To the end that no employer shall evade an

1 unfavorable or high cost experience, incurred
2 experience shall be used in future ratings regardless
3 of any change in ownership, control, management, or
4 operations.

5 (c) The board, on application of an affected
6 party, may modify the rating on proof that a change in
7 management or operations is clearly probable to reduce
8 the loss experience of the insured.

9 (d) The board shall promulgate rules necessary
10 to implement this article.

11 Revised Law

12 Sec. 2053.055. RATE ADJUSTMENT. If the commissioner
13 determines that an insurance company's rates do not meet with the
14 standards imposed by Section 2053.002, the commissioner may order
15 the insurance company to adjust the rates to meet those standards.
16 An insurance company may appeal an order under this section in
17 accordance with Subchapter D, Chapter 36. (V.T.I.C. Art. 5.58,
18 Sec. (a) (part).)

19 Source Law

20 (a) [The commissioner shall develop reasonable
21 statistical plans, . . . to aid in determining whether
22 rates meet] the standards imposed under Section 2,
23 Article 5.55 of this code. If the commissioner
24 determines that any insurer's rates do not meet those
25 standards, the commissioner may order the insurer to
26 adjust its rates to meet those standards. An order of
27 the commissioner under this article may be appealed
28 under Article 1.04 of this code. . . .

29 Revisor's Note
30 (End of Subchapter)

31 (1) Section 2(f), V.T.I.C. Article 5.55, states
32 that the premium rates promulgated by the State Board
33 of Insurance for 1991 continue in effect for all
34 workers' compensation insurance policies issued before
35 the "rate change date." Section 1(5), V.T.I.C.
36 Article 5.55, defines "rate change date" and directs
37 the Texas Department of Insurance to publish notice of
38 the rate change date in the Texas Register. The Texas
39 Workers' Compensation Insurance Fund issued its first
40 policy on January 1, 1992. Thus, the "rate change
41 date" was in March of 1992. The revised law omits
42 Sections 1(5) and 2(f) as executed because, according
43 to the department, no workers' compensation insurance

1 policy issued before the "rate change date" remains in
2 effect. The omitted law reads:

3 [Sec. 1]

4 (5) "Rate change date" means
5 the later of March 1, 1992, or the 60th day
6 after the date of issuance of the first
7 insurance policy by the Texas Workers'
8 Compensation Insurance Fund under Article
9 5.76-3 of this code. The department shall
10 publish notice of the rate change date in
11 the Texas Register.

12 [Sec. 2]

13 (f) Premium rates promulgated by the
14 State Board of Insurance for 1991 continue
15 to apply to all workers' compensation
16 insurance policies issued before the rate
17 change date.

18 (2) V.T.I.C. Article 5.60A requires the State
19 Board of Insurance to conduct rate hearings, provides
20 procedures for those hearings, and requires the board
21 to consider changes in workers' compensation laws when
22 setting workers' compensation insurance rates. The
23 revised law omits Article 5.60A as impliedly repealed.
24 Article 18, Chapter 12, Acts of the 72nd Legislature,
25 2nd Called Session, 1991, abolished the board's
26 function of promulgating workers' compensation
27 insurance rates and authorized insurance companies to
28 set the rates, file the rates with the Texas Department
29 of Insurance, and use the rates unless the rates are
30 disapproved. The omitted law reads:

31 Art. 5.60A. (a) The Board shall
32 conduct an annual hearing to review rates to
33 be charged for workers' compensation
34 insurance written in this state under this
35 subchapter. The hearing shall be conducted
36 under the contested case provisions of the
37 Administrative Procedure and Texas Register
38 Act (Article 6252-13a, Vernon's Texas Civil
39 Statutes).

40 (b) The Board shall conduct a hearing
41 six months prior to the annual hearing to
42 revise rates to establish the methodology
43 and sources of data to be used in reviewing
44 rates. The hearing shall be conducted under
45 the Administrative Procedure and Texas
46 Register Act (Article 6252-13a, Vernon's
47 Texas Civil Statutes).

48 (c) To assist the Board in making
49 rates and to provide additional information
50 on certain trends that may affect the costs

1 of workers' compensation insurance, the
2 executive director of the Texas Workers'
3 Compensation Commission or a person
4 designated by that officer shall testify at
5 any rate hearing conducted under this
6 article. The testimony shall relate to
7 trends in:

8 (1) claims resolution of
9 workers' compensation cases; and

10 (2) cost components in workers'
11 compensation cases.

12 (d) The testimony of the executive
13 director or designee is subject to
14 cross-examination by the Board and any
15 party to the hearing.

16 (e) The Board shall consider changes
17 in the workers' compensation laws when
18 setting workers' compensation insurance
19 rates.

20 [Sections 2053.056-2053.100 reserved for expansion]

21 SUBCHAPTER C. STATISTICAL PLANS; AGENT

22 Revised Law

23 Sec. 2053.101. STATISTICAL PLANS FOR REPORTING LOSS
24 EXPERIENCE AND OTHER DATA. The commissioner shall develop and may
25 periodically modify reasonable statistical plans for workers'
26 compensation insurance to be used by each insurance company in
27 recording and reporting the insurance company's loss experience and
28 other data required by the department, so that the total loss and
29 expense experience of all insurance companies is made available at
30 least annually in the form and detail necessary to assist in
31 determining whether an insurance company's rates meet the standards
32 imposed under Section 2053.002. (V.T.I.C. Art. 5.58, Sec. (a)
33 (part).)

34 Source Law

35 Art. 5.58. (a) Recording and Reporting of Loss
36 Experience and Other Data. The commissioner shall
37 develop reasonable statistical plans, which may be
38 modified from time to time and which shall be used
39 thereafter by each insurer in the recording and
40 reporting of its loss experience and such other data as
41 may be required, in order that the total loss and
42 expense experience of all insurers may be made
43 available at least annually in such form and detail as
44 may be necessary to aid in determining whether rates
45 meet the standards imposed under Section 2, Article
46 5.55 of this code. . . .

47 Revised Law

48 Sec. 2053.102. TREATMENT OF PAYMENTS UNDER STATISTICAL
49 PLAN. A statistical plan developed under Section 2053.101 must

1 require the following payments to be reported separately and not to
2 be considered as a loss or expense for purposes of computing a
3 premium rate modifier or surcharge of an insured:

4 (1) a direct payment made by an insurance company to
5 influence public policy; and

6 (2) any amount paid by an insurance company:

7 (A) as damages in an action against the insurance
8 company for malice or bad faith; or

9 (B) as a fine or penalty. (V.T.I.C. Art. 5.58,
10 Sec. (e).)

11 Source Law

12 (e) Payments Excluded From Rates. In any
13 statistical plan developed by the commissioner, direct
14 expenditures by an insurer to influence public policy
15 and any amounts paid by an insurer as damages in a suit
16 against the insurer for malice or bad faith or as fines
17 or penalties shall be reported separately, and the
18 expenditures and payments shall not be considered as a
19 loss or expense for the calculation of any premium rate
20 modifier or surcharge of an insured.

21 Revisor's Note

22 Section (e), V.T.I.C. Article 5.58, refers to
23 certain "expenditures" and "expenditures and
24 payments" made by a workers' compensation insurance
25 company. The revised law substitutes "payments" for
26 "expenditures" and "payments and expenditures" for
27 consistent use of terminology within this chapter.

28 Revised Law

29 Sec. 2053.103. STATISTICAL AGENT. (a) The commissioner
30 may designate or contract with a qualified organization to serve as
31 the statistical agent for the commissioner under this subchapter as
32 provided by Subchapter E, Chapter 38.

33 (b) The statistical agent may provide to one or more
34 advisory organizations any information provided by the agent to the
35 commissioner under this subchapter. (V.T.I.C. Art. 5.58, Sec. (a)
36 (part).)

37 Source Law

38 (a) . . . The commissioner may designate or

1 contract with a qualified organization to serve as the
2 statistical agent for the commissioner under this
3 article as provided by Article 21.69 of this code. The
4 statistical agent may provide to one or more advisory
5 organizations the information provided by the
6 statistical agent to the commissioner under this
7 article.

8 Revisor's Note

9 Section (a), V.T.I.C. Article 5.58, refers to the
10 designation of a statistical agent and the information
11 provided by that agent under Article 5.58. That
12 article is revised in this chapter as Sections
13 2053.052 and 2053.055 and as this subchapter and
14 Subchapter D. The provisions relating to statistical
15 agents are revised in this subchapter, and the revised
16 law is drafted accordingly.

17 [Sections 2053.104-2053.150 reserved for expansion]

18 SUBCHAPTER D. REPORTING REQUIREMENTS AND EXCHANGE OF INFORMATION

19 Revised Law

20 Sec. 2053.151. WORKERS' COMPENSATION CLAIMS REPORTS AND
21 INFORMATION. (a) The following information must be reported on
22 each workers' compensation claim:

23 (1) the hazard classification of the affected
24 employee;

25 (2) the date of injury;

26 (3) the social security number of the claimant;

27 (4) the severity classification of the claim,
28 including separate classifications for:

29 (A) claims in which death benefits are paid;

30 (B) claims in which lifetime income benefits are
31 paid;

32 (C) claims in which only temporary income
33 benefits are paid;

34 (D) claims in which impairment income benefits
35 are paid;

36 (E) claims in which supplemental income benefits
37 are paid; and

1 (F) claims in which only medical benefits are
2 paid;

3 (5) the amount paid in periodic payments;

4 (6) the amount paid in lump-sum payments;

5 (7) the amount paid for:

6 (A) temporary income benefits;

7 (B) impairment income benefits;

8 (C) supplemental income benefits; and

9 (D) death and burial benefits;

10 (8) the total amount paid for:

11 (A) income, death, or burial benefits; and

12 (B) medical benefits;

13 (9) the total amount of incurred losses for:

14 (A) income, death, or burial benefits; and

15 (B) medical benefits;

16 (10) the amount paid to:

17 (A) doctors and other health care providers; and

18 (B) hospitals and other health care facilities;

19 and

20 (11) other information required by the commissioner.

21 (b) For purposes of Subsection (a), the commissioner shall
22 establish standards and procedures for categorizing insurance and
23 medical benefits required to be reported on each workers'
24 compensation claim. In establishing the standards, the
25 commissioner shall consult with the Texas Workers' Compensation
26 Commission to ensure that the data collection methodology will
27 yield data necessary for research and medical cost containment
28 efforts.

29 (c) The commissioner may allow the information required by
30 Subsection (a) to be reported in the aggregate for each risk for
31 claims in which benefit payments are less than \$5,000. The
32 commissioner may adjust the \$5,000 threshold for aggregate
33 reporting to account for inflationary changes.

34 (d) A person may not distribute or otherwise disclose a

1 social security number or any other information collected under
2 Subsection (a) that would disclose the identity of a claimant.
3 (V.T.I.C. Art. 5.58, Secs. (b), (c), (d), (g).)

4 Source Law

5 (b) Standards and Procedures. For purposes of
6 Subsection (c) of this article, the commissioner shall
7 establish standards and procedures for categorizing
8 insurance and medical benefits reported on each
9 workers' compensation claim. The commissioner shall
10 consult with the Texas Workers' Compensation
11 Commission and the Research and Oversight Council on
12 Workers' Compensation in establishing these standards
13 to ensure that the data collection methodology will
14 also yield data necessary for research and medical
15 cost containment efforts.

16 (c) Content of Detailed Claim Information
17 Reports. The following information shall be reported
18 on each workers' compensation claim:

19 (1) the hazard classification of the
20 affected employee;

21 (2) the date of injury;

22 (3) the social security number of the
23 claimant;

24 (4) the severity classification of the
25 claim, including separate classifications for claims
26 in which death benefits are paid, claims in which
27 lifetime income benefits are paid, claims in which
28 only temporary income benefits are paid, claims in
29 which impairment benefits are paid, claims in which
30 supplemental benefits are paid, and claims in which
31 only medical benefits are paid;

32 (5) the amount paid in periodic payments;

33 (6) the amount paid in lump-sum payments;

34 (7) the amount paid for temporary income
35 benefits;

36 (8) the amount paid for impairment income
37 benefits;

38 (9) the amount paid for supplemental
39 income benefits;

40 (10) the amount paid for death and burial
41 benefits;

42 (11) the total amount paid for income,
43 death, or burial benefits;

44 (12) the total amount of incurred losses
45 for income, death, or burial benefits;

46 (13) the amount paid to doctors and other
47 health care providers;

48 (14) the amount paid to hospitals and
49 other health care facilities;

50 (15) the total amount paid for medical
51 benefits;

52 (16) the total amount of incurred losses
53 for medical benefits; and

54 (17) other information required by the
55 commissioner.

56 (d) Information Confidential. A person may not
57 distribute or otherwise disclose a social security
58 number or any other information collected under
59 Subsection (c) of this article which would disclose
60 the identity of any claimant.

61 (g) Reports of Aggregate Data. The commissioner
62 may permit the information required by Subsection (c)

1 of this article to be reported in the aggregate for
2 each risk for claims in which benefit payments are less
3 than \$5,000. The commissioner may adjust the dollar
4 threshold for aggregate reporting to account for
5 inflationary changes.

6 Revisor's Note

7 (1) Section (b), V.T.I.C. Article 5.58,
8 requires the commissioner of insurance to consult with
9 the Research and Oversight Council on Workers'
10 Compensation. The revised law omits this reference as
11 unnecessary because Chapter 10, Acts of the 78th
12 Legislature, 3rd Called Session, 2003, abolished that
13 council and transferred its functions to the Texas
14 Department of Insurance. It is unnecessary to
15 substitute a requirement that the commissioner consult
16 with the department because, under Section 31.021 of
17 this code, the commissioner is the chief executive and
18 administrative officer of the department.

19 (2) Section (c)(4), V.T.I.C. Article 5.58,
20 refers to "impairment benefits" and "supplemental
21 benefits." The revised law substitutes "impairment
22 income benefits" for "impairment benefits" and
23 "supplemental income benefits" for "supplemental
24 benefits" for consistency with terminology used
25 elsewhere in this section and in the Labor Code.

26 Revised Law

27 Sec. 2053.152. UPDATE AND TRANSMISSION OF CLAIMS REPORTS.

28 (a) An insurance company, in accordance with the filing
29 requirements of a statistical plan developed under Section
30 2053.101, shall update and transmit to the commissioner or the
31 commissioner's statistical agent a claims report filed under
32 Section 2053.151.

33 (b) Each insurance company that writes at least one-half of
34 one percent of the workers' compensation insurance in this state
35 shall report the company's data in a compatible electronic format
36 prescribed by the commissioner. The commissioner shall take

1 necessary measures to ensure the accuracy of the data and the
2 adequacy of the electronic format for the data. (V.T.I.C. Art.
3 5.58, Sec. (f).)

4 Source Law

5 (f) Transmission of Claims Reports. The claims
6 reports filed under Subsection (c) of this article
7 shall be updated by each insurer and transmitted to the
8 commissioner or the commissioner's statistical agent
9 in accordance with the filing requirements of the
10 commissioner's statistical plan. Each insurer writing
11 at least one-half of one percent of the workers'
12 compensation insurance in this state shall report its
13 data in a compatible electronic format prescribed by
14 the commissioner. The commissioner shall take
15 necessary measures to ensure the accuracy of the data
16 and the adequacy of the format for data reported in an
17 electronic format.

18 Revised Law

19 Sec. 2053.153. EXCHANGE OF INFORMATION AND CONSULTATION
20 WITH OTHERS. To further the uniform administration of rating laws
21 relating to workers' compensation insurance, the commissioner and
22 each insurance company may:

23 (1) exchange information and experience data with the
24 National Association of Insurance Commissioners and with insurance
25 supervisory officials, insurance companies, and advisory
26 organizations in other states; and

27 (2) consult and cooperate with a person or entity
28 described by Subdivision (1) with respect to ratemaking and the
29 application of rating systems. (V.T.I.C. Art. 5.58, Sec. (i).)

30 Source Law

31 (i) Consultation with Other States. In order to
32 further uniform administration of rating laws, the
33 commissioner and every insurer may exchange
34 information and experience data with the National
35 Association of Insurance Commissioners, insurance
36 supervisory officials, insurers, and advisory
37 organizations in other states and may consult and
38 cooperate with them with respect to rate-making and
39 the application of rating systems.

40 Revisor's Note

41 Section (i), V.T.I.C. Article 5.58, refers to
42 "rating laws." The revised law substitutes "rating
43 laws relating to workers' compensation insurance" for
44 "rating laws" for accuracy because Article 5.58

1 applies only to workers' compensation insurance.

2 Revised Law

3 Sec. 2053.154. LOSS STATEMENT AND PAYROLL REPORT. (a) For
4 purposes of this section, "insurance company" means a stock
5 company, mutual insurance company, reciprocal or interinsurance
6 exchange, or Lloyd's plan authorized to engage in the business of
7 workers' compensation insurance in this state. The term includes
8 the Texas Mutual Insurance Company.

9 (b) The department may require an insurance company to
10 submit a sworn statement or report showing:

11 (1) the payroll reported to the insurance company;

12 (2) incurred losses by classification; and

13 (3) other information the department determines may be
14 necessary to implement the department's duties.

15 (c) The department shall prescribe the necessary forms for a
16 statement or report required by Subsection (b) with consideration
17 of the methods and forms used for similar purposes in other states
18 so that uniformity of statistics will not be affected. (V.T.I.C.
19 Arts. 5.59, 5.63.)

20 Source Law

21 Art. 5.59. The department may require sworn
22 statements from any insurance company, including the
23 Texas Mutual Insurance Company, showing the payroll
24 reported to the company and incurred losses by
25 classifications and such other information which in
26 the judgment of the department may be necessary to
27 carry out its duties. The department shall prescribe
28 the necessary forms for such statements and reports,
29 having due regard to the methods and forms in use in
30 other states for similar purpose in order that
31 uniformity of statistics may not be disturbed.

32 Art. 5.63. The words "Company" and
33 "Association" used in this subchapter mean the Texas
34 Employers Insurance Association, or any stock company,
35 or any mutual company, or any reciprocal, or any
36 interinsurance exchange, or Lloyd's association
37 authorized to write Workmen's Compensation Insurance
38 in this State.

39 Revisor's Note

40 V.T.I.C. Article 5.59 refers to "sworn
41 statements" the Texas Department of Insurance may
42 require from an insurance company. The revised law

1 substitutes a reference to "a sworn statement or
2 report" for consistency of terminology within this
3 section.

4 [Sections 2053.155-2053.200 reserved for expansion]

5 SUBCHAPTER E. OPTIONAL DEDUCTIBLE PLANS

6 Revised Law

7 Sec. 2053.201. DEFINITION. In this subchapter, "insurance
8 company" means a stock company, mutual insurance company,
9 reciprocal or interinsurance exchange, or Lloyd's plan authorized
10 to engage in the business of workers' compensation insurance in
11 this state. (V.T.I.C. Art. 5.63.)

12 Source Law

13 Art. 5.63. The words "Company" and
14 "Association" used in this subchapter mean the Texas
15 Employers Insurance Association, or any stock company,
16 or any mutual company, or any reciprocal, or any
17 interinsurance exchange, or Lloyd's association
18 authorized to write Workmen's Compensation Insurance
19 in this State.

20 Revised Law

21 Sec. 2053.202. ESTABLISHMENT OF OPTIONAL DEDUCTIBLE PLANS.

22 (a) The department shall require each insurance company writing
23 workers' compensation insurance in this state to offer at least
24 three optional deductible plans adopted under this section that
25 allow a policyholder to self-insure for the amount of the
26 deductible.

27 (b) The commissioner by rule shall allow an employer to
28 enter into an agreement with an insurer for a negotiated deductible
29 that exceeds the highest deductible available under a plan
30 described by Subsection (a). (V.T.I.C. Art. 5.55C, Secs. (a),
31 (b).)

32 Source Law

33 Art. 5.55C. (a) The Board shall require each
34 company or association that writes workers'
35 compensation insurance in this state to offer optional
36 deductible plans to allow policyholders to self-insure
37 for the deductible amount.

38 (b) Not later than January 1, 1992, the Board
39 shall promulgate at least three plans with varying
40 deductible options. In addition, the Board by rule
41 shall permit an employer to enter into an agreement

1 with an insurer for a negotiated deductible in excess
2 of the largest promulgated deductible.

3 Revisor's Note

4 Section (b), V.T.I.C. Article 5.55C, directs the
5 State Board of Insurance to adopt at least three plans
6 with varying deductible options "not later than
7 January 1, 1992." The revised law omits the quoted
8 language as executed.

9 Revised Law

10 Sec. 2053.203. PAYMENT OF CLAIMS; REIMBURSEMENT. (a) An
11 insurance company issuing a deductible policy under this subchapter
12 shall service all claims that arise during the policy period,
13 including those claims payable, wholly or partly, from the
14 deductible amount.

15 (b) A deductible policy must provide that:

16 (1) the insurance company issuing the policy shall pay
17 all benefits that are payable from the deductible amount; and

18 (2) the policyholder shall make reimbursements
19 periodically, rather than at the time claim costs are incurred.

20 (c) The commissioner shall adopt rules to provide for
21 adequate security for reimbursement of the amount paid by an
22 insurance company that is payable from the deductible amount.
23 (V.T.I.C. Art. 5.55C, Secs. (d), (e).)

24 Source Law

25 (d) A deductible policy must provide that the
26 company or association will make all payments for
27 benefits that are payable from the deductible amount
28 and that reimbursement by the policyholder shall be
29 made periodically, rather than at the time claim costs
30 are incurred. The State Board of Insurance shall
31 promulgate rules that provide for adequate security
32 for reimbursement of the amount paid by the company or
33 association which is payable from the deductible.

34 (e) The company or association shall service all
35 claims that arise during the policy period, including
36 those claims payable, in whole or in part, from the
37 deductible amount.

38 Revised Law

39 Sec. 2053.204. RATE REDUCTION. (a) The department shall
40 perform an actuarial analysis to determine the amount of rate
41 reduction applicable to a deductible policy under this subchapter

1 as compared to a standard workers' compensation insurance policy
2 without a deductible.

3 (b) In years subsequent to the year in which the actuarial
4 analysis described by Subsection (a) is performed, the department
5 shall determine the amount of rate reduction according to rating
6 procedures adopted by the commissioner.

7 (c) When establishing procedures for the computation of
8 experience modifiers, the commissioner may allow the exclusion of
9 any claim amount paid under a deductible by an employer. (V.T.I.C.
10 Art. 5.55C, Sec. (c).)

11 Source Law

12 (c) The Board shall perform an actuarial
13 analysis to determine the amount of rate reduction
14 applicable to policies under this article as opposed
15 to standard policies without a deductible. In
16 subsequent years, the Board shall determine the amount
17 of rate reduction according to rating procedures
18 adopted by the Board. When establishing procedures for
19 the calculation of experience modifiers, the Board may
20 allow the exclusion of the claim amount paid under the
21 deductible by the employer.

22 Revised Law

23 Sec. 2053.205. PROHIBITED CONDUCT. A person who is
24 employed by a policyholder who self-insures the deductible amount
25 as provided by this subchapter may not be required to pay any
26 portion of the deductible amount or be harassed, discharged, or
27 otherwise discriminated against because the person, in good faith:

28 (1) is considering initiating or has initiated a
29 workers' compensation claim;

30 (2) has retained a representative to represent the
31 person regarding a claim;

32 (3) has testified or will testify at an administrative
33 or judicial proceeding under Subtitle A, Title 5, Labor Code;

34 (4) has reported a hazardous working condition or
35 hazardous practice to the Texas Workers' Compensation Commission;
36 or

37 (5) has taken or is considering taking any other
38 action that may result in a requirement that the policyholder pay a

deductible amount through a self-insurance plan. (V.T.I.C. Art. 5.55C, Secs. (f), (g)(1).)

Source Law

(f) A person who is employed by a policyholder who self-insures the deductible amount as provided under this article may not be required to pay any of the deductible amount.

(g)(1) A person who is employed by a policyholder who self-insures the deductible amount as provided under this article may not be harassed, discharged, or otherwise discriminated against because the employee, in good faith:

(A) is considering initiating a workers' compensation claim;

(B) has initiated a workers' compensation claim;

(C) has retained a representative to represent the employee regarding a claim;

(D) has testified or is about to testify at an administrative or judicial proceeding under the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989);

(E) has reported a hazardous working condition or hazardous practice to the commission; or

(F) has taken any other action or is considering taking any other action that may result in the policyholder being required to pay a deductible amount through the self-insurance plan.

Revisor's Note

(1) Section (g)(1)(D), V.T.I.C. Article 5.55C, refers to the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989). That statute was codified in 1993 as Subtitle A, Title 5, Labor Code. The revised law is drafted accordingly. Throughout this chapter, a citation to the Texas Workers' Compensation Act has been changed appropriately.

(2) Section (g)(1)(E), V.T.I.C. Article 5.55C, refers to "the commission" to which an employee reports a hazardous working condition. The revised law substitutes a reference to "the Texas Workers' Compensation Commission" for "the commission" because that is the commission to which an employee would report a hazardous working condition.

Revised Law

Sec. 2053.206. VIOLATION OF SUBCHAPTER. (a) A person commits a Class A administrative violation under Subtitle A, Title 5, Labor Code, if the person engages in conduct that violates this subchapter.

(b) Liability for damages for a violation of this subchapter is determined exclusively under Subtitle A, Title 5, Labor Code. (V.T.I.C. Art. 5.55C, Secs. (g)(2), (h).)

Source Law

[(g)]

(2) Liability for damages for violations of this article shall be determined exclusively pursuant to the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989).

(h) Any person who engages in conduct prohibited under this article commits a Class A administrative violation under the Texas Workers' Compensation Act (S.B. No. 1, Acts of the 71st Legislature, 2nd Called Session, 1989).

[Sections 2053.207-2053.250 reserved for expansion]

SUBCHAPTER F. PREMIUM INCENTIVES AND SURCHARGE

FOR SMALL EMPLOYERS

Revised Law

Sec. 2053.251. DEFINITIONS. In this subchapter:

(1) "Insurance company" means a stock company, mutual insurance company, reciprocal or interinsurance exchange, or Lloyd's plan authorized to engage in the business of workers' compensation insurance in this state.

(2) "Premium" means workers' compensation insurance premium.

(3) "Small employer" means an employer:

(A) who is not experience-rated by the department for workers' compensation insurance purposes; and

(B) whose annual premium is less than \$5,000.
(V.T.I.C. Art. 5.55B, Sec. (a); Art. 5.63; New.)

Source Law

Art. 5.55B. (a) In this article "small employer" means an employer who is not experience-rated by the State Board of Insurance for

1 workers' compensation insurance purposes and whose
2 annual workers' compensation premium is less than
3 \$5,000.

4 Art. 5.63. The words "Company" and
5 "Association" used in this subchapter mean the Texas
6 Employers Insurance Association, or any stock company,
7 or any mutual company, or any reciprocal, or any
8 interinsurance exchange, or Lloyd's association
9 authorized to write Workmen's Compensation Insurance
10 in this State.

11 Revisor's Note

12 The revised law adds a definition of "premium"
13 for drafting convenience and to eliminate frequent,
14 unnecessary repetition of the substance of the
15 definition.

16 Revised Law

17 Sec. 2053.252. PLAN FOR PREMIUM DISCOUNT AND SURCHARGE.
18 The commissioner shall adopt a plan under which each insurance
19 company writing workers' compensation insurance in this state
20 shall:

21 (1) grant a premium discount to a small employer who
22 qualifies for a discount under this subchapter; and

23 (2) assess a surcharge as provided by Section
24 2053.254. (V.T.I.C. Art. 5.55B, Sec. (b) (part).)

25 Source Law

26 (b) The Board shall promulgate a plan by which
27 all insurance companies writing workers' compensation
28 insurance in this state shall grant a discount to small
29 employers who qualify under this article and by which
30 surcharges are assessed [against small employers who
31 experience two or more employee compensable lost-time
32 injuries during a one-year period.]

33 Revised Law

34 Sec. 2053.253. ELIGIBILITY FOR PREMIUM DISCOUNT. (a) A
35 small employer who has not experienced a compensable employee
36 lost-time injury during the most recent one-year period for which
37 statistics are available shall receive a discount of 10 percent on
38 the amount of the employer's premium.

39 (b) A small employer who has not experienced a compensable
40 employee lost-time injury during the most recent two-year period
41 for which statistics are available shall receive a discount of 15

1 percent on the amount of the employer's premium.

2 (c) A small employer who has experienced one or more
3 compensable employee lost-time injuries during the most recent
4 one-year period for which statistics are available is not eligible
5 for a discount on the amount of the employer's premium. (V.T.I.C.
6 Art. 5.55B, Secs. (c), (d), (e).)

7 Source Law

8 (c) A small employer who has not experienced a
9 compensable employee lost-time injury during the most
10 recent one-year period for which statistics are
11 available shall receive a discount of 10 percent on the
12 amount of the employer's workers' compensation
13 insurance premium.

14 (d) A small employer who has not experienced a
15 compensable employee lost-time injury during the most
16 recent two-year period for which statistics are
17 available shall receive a discount of 15 percent on the
18 amount of the employer's workers' compensation
19 insurance premium.

20 (e) A small employer who has experienced one
21 compensable employee lost-time injury during the most
22 recent one-year period for which statistics are
23 available is not eligible for a discount on the amount
24 of the employer's workers' compensation insurance
25 premium.

26 Revisor's Note

27 Section (e), V.T.I.C. Article 5.55B, refers to
28 the ineligibility of a small employer to receive a
29 premium discount if the employer has experienced "one
30 compensable employee lost-time injury" during a
31 certain period. The revised law substitutes "one or
32 more compensable employee lost-time injuries" for "one
33 compensable employee lost-time injury" because it is
34 clear from the context of the source law that the
35 legislature intended that a small employer who
36 experienced more than one compensable employee
37 lost-time injury during the period prescribed by that
38 section would also be ineligible for a premium
39 discount.

40 Revised Law

41 Sec. 2053.254. ASSESSMENT OF PREMIUM SURCHARGE. A small
42 employer who has experienced two or more compensable employee

1 lost-time injuries during the most recent one-year period for which
2 statistics are available shall be assessed a surcharge of 10
3 percent on the amount of the employer's premium. (V.T.I.C. Art.
4 5.55B, Secs. (b) (part), (f).)

5 Source Law

6 (b) [The Board shall promulgate a plan . . . by
7 which surcharges are assessed] against small employers
8 who experience two or more employee compensable
9 lost-time injuries during a one-year period.

10 (f) A small employer who has experienced two or
11 more compensable employee lost-time injuries during
12 the most recent one-year period for which statistics
13 are available shall be assessed a surcharge of 10
14 percent on the amount of the employer's workers'
15 compensation premium.

16 Revised Law

17 Sec. 2053.255. MAXIMUM DISCOUNT AND ASSESSMENT. For any
18 annual premium, a small employer may not:

- 19 (1) receive a discount of more than 15 percent; or
20 (2) be required to pay a surcharge of more than 10
21 percent. (V.T.I.C. Art. 5.55B, Sec. (g) (part).)

22 Source Law

23 (g) . . . For any annual workers' compensation
24 premium, a small employer may not receive a discount of
25 more than 15 percent, and a small employer may not be
26 required to pay a surcharge of more than 10 percent.

27 Revised Law

28 Sec. 2053.256. DISCOUNTS AND SURCHARGES NOT CUMULATIVE.
29 (a) The discounts and surcharges established under this subchapter
30 are not cumulative.

31 (b) A small employer is entitled to receive the discount
32 under this subchapter in addition to any lesser deviation in the
33 rate used to write an insurance policy under Sections 2053.051 and
34 2053.052(a) and (b). (V.T.I.C. Art. 5.55B, Sec. (g) (part).)

35 Source Law

36 (g) The discounts and surcharges established
37 under this article are not cumulative; however, a
38 small employer is entitled to receive the discount
39 provided by this article in addition to any lesser
40 deviation in the rate at which a policy is written
41 under Article 5.60 of this code. . . .

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Revisor's Note

Section (g), V.T.I.C. Article 5.55B, refers to the rate at which a policy is written under V.T.I.C. Article 5.60, which is revised in various chapters in this code. The provisions of that article relating to the rates at which policies are written are revised in this chapter as Sections 2053.051 and 2053.052(a) and (b). The revised law is drafted accordingly.

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5 CHAPTER 2054. TEXAS MUTUAL INSURANCE COMPANY

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Revised Law

8 Sec. 2054.001. DEFINITIONS. In this chapter:

9 (1) "Board" means the board of directors of the
10 company.

11 (2) "Commission" means the Texas Workers' Compensation
12 Commission.

13 (3) "Company" means the Texas Mutual Insurance
14 Company.

15 (4) "Workers' compensation insurance" means insurance
16 for a risk under:

17 (A) Subtitle A, Title 5, Labor Code;

18 (B) Chapter 504, Labor Code;

19 (C) the Longshore and Harbor Workers'
20 Compensation Act (33 U.S.C. Section 901 et seq.);

21 (D) the Federal Mine Safety and Health Act of
22 1977 (30 U.S.C. Section 801 et seq.);

23 (E) the Defense Base Act (42 U.S.C. Sections
24 1651-1654);

25 (F) the federal Employers' Liability Act (45
26 U.S.C. Section 51 et seq.);

27 (G) the Nonappropriated Fund Instrumentalities
28 Act (5 U.S.C. Sections 8171-8173);

29 (H) the Outer Continental Shelf Lands Act (43
30 U.S.C. Section 1331 et seq.); or

31 (I) the Merchant Marine Act of 1920 (46 App.
32 U.S.C. Section 861 et seq.). (V.T.I.C. Art. 5.76-3, Secs. 1(1),
33 (2), (3), (5).)

Source Law

Art. 5.76-3

Sec. 1. In this article:

(1) "Board" means the board of directors of the company.

(2) "Commission" means the Texas Workers' Compensation Commission.

(3) "Company" means the Texas Mutual Insurance Company.

(5) "Workers' compensation insurance" means the insurance for any risk under:

(A) Subtitle A, Title 5, Labor Code
(the Texas Workers' Compensation Act);

(B) the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901);

(C) the Federal Mine Safety and Health Act of 1977 (33 U.S.C. Section 801 et seq.);

(D) the Defense Base Act (42 U.S.C. Sections 1651-1654);

(E) the federal Employers' Liability Act (45 U.S.C. Section 51 et seq.);

(F) the Nonappropriated Fund Instrumentalities Act (5 U.S.C. Sections 8171-8173);

(G) the Outer Continental Shelf Lands Act (43 U.S.C. Section 1331 et seq.);

(H) the Merchant Marine Act of 1920
(46 U.S.C. Section 861 et seq.); or

(I) Chapter 504, Labor Code.

Revisor's Note

(1) Section 1, V.T.I.C. Article 5.76-3, defines terms for purposes of "this article," meaning Article 5.76-3. Although some provisions of this chapter are derived from V.T.I.C. Article 5.76-4, the revised law applies the defined terms to the entire chapter and substitutes "this chapter" for "this article" in this section and throughout this chapter because both articles relate to the operation of the Texas Mutual Insurance Company, and it is therefore appropriate to refer to provisions derived from both articles.

(2) Section 1(4), V.T.I.C. Article 5.76-3, defines "fund" to mean the Texas Workers' Compensation Insurance Fund. The revised law omits the definition as unnecessary because the full name of the fund is used throughout the revised law as appropriate. The omitted law reads:

(4) "Fund" means the Texas Workers' Compensation Insurance Fund.

1 Revised Law

2 Sec. 2054.002. REFERENCE TO TEXAS WORKERS' COMPENSATION
3 INSURANCE FUND. A reference in state law to the Texas Workers'
4 Compensation Insurance Fund means the Texas Mutual Insurance
5 Company. (V.T.I.C. Art. 5.76-3, Sec. 2(a) (part).)

6 Source Law

7 Sec. 2. (a) Effective September 1, 2001, the
8 Texas Workers' Compensation Insurance Fund . . . shall
9 be called the Texas Mutual Insurance Company. A
10 reference in the laws of this state to the Texas
11 Workers' Compensation Insurance Fund means the Texas
12 Mutual Insurance Company. . . .

13 Revisor's Note

14 Section 2(a), V.T.I.C. Article 5.76-3, provides
15 that "[e]ffective September 1, 2001, the Texas
16 Workers' Compensation Insurance Fund . . . shall be
17 called the Texas Mutual Insurance Company." The
18 revised law omits the quoted language as executed and,
19 throughout this chapter, substitutes a reference to
20 the Texas Mutual Insurance Company for references to
21 the Texas Workers' Compensation Insurance Fund.

22 Revised Law

23 Sec. 2054.003. OPERATION AS DOMESTIC MUTUAL INSURANCE
24 COMPANY. (a) The company operates as a domestic mutual insurance
25 company under Chapter 883. The company is subject to that chapter,
26 but is not subject to Chapter 826.

27 (b) The company:

28 (1) has the legal rights of a mutual insurance company
29 operating under Chapter 883 and of an individual in this state; and

30 (2) may bring a suit in the company's own name without
31 any procedural prerequisites to the exercise of that power.

32 (c) The company is not a state agency. (V.T.I.C. Art.
33 5.76-3, Secs. 2(a) (part), (b) (part), (h), 21(c).)

34 Source Law

35 Sec. 2. (a) . . . the Texas Workers'
36 Compensation Insurance Fund shall operate as, and
37 exercise the powers of, a domestic mutual insurance
38 company in accordance with Chapter 15 of this code, and

1
2 (b) The company is subject to Chapter 15 of this
3 code, other than Article 15.22 of this code. . . .

4 (h) In addition to other rights of the company
5 under this article, the company has the legal rights of
6 a mutual insurance company operating under Chapter 15
7 of this code, and of a private person in this state,
8 and has the power to sue in its own name. No procedure
9 is a prerequisite to the exercise of the power by the
10 company to sue.

11 [Sec. 21]

12 (c) The company is not a state agency.

13 Revisor's Note

14 (1) Section 2(a), V.T.I.C. Article 5.76-3,
15 provides that the Texas Workers' Compensation
16 Insurance Fund, renamed by that section as the Texas
17 Mutual Insurance Company, shall operate as, "and
18 exercise the powers of," a domestic mutual insurance
19 company. The revised law omits the quoted language as
20 unnecessary because the Texas Mutual Insurance
21 Company's operation as a domestic insurance company
22 necessarily implies that the company has the authority
23 to exercise the powers of a domestic mutual insurance
24 company.

25 (2) Section 2(a), V.T.I.C. Article 5.76-3,
26 provides that the Texas Mutual Insurance Company
27 operates as a domestic mutual insurance company under
28 V.T.I.C. Chapter 15, and Section 2(h), Article
29 5.76-3, provides that the company has the legal rights
30 of a mutual insurance company under Chapter 15.
31 Section 2(b), Article 5.76-3, revised in relevant part
32 as Subsection (a) of this section, also states that the
33 company is subject to Chapter 15, other than V.T.I.C.
34 Article 15.22. Chapter 15 is revised as Chapter 883 of
35 this code, with the exception of Article 15.22, which
36 is revised as Chapter 826 of this code. The revised
37 law substitutes a reference to Chapter 883 of this code
38 for the references to Chapter 15 in Sections 2(a) and
39 (h), but does not reference Chapter 826 of this code

1 because of the statement of inapplicability of Article
2 15.22, revised as that chapter, that is contained in
3 Section 2(b).

4 (3) Section 2(h), V.T.I.C. Article 5.76-3,
5 specifies certain rights of the Texas Mutual Insurance
6 Company that are "[i]n addition to other rights of the
7 company under this article." The revised law omits the
8 quoted language as unnecessary because an accepted
9 general principle of statutory construction requires a
10 statute to be given cumulative effect with other
11 statutes unless it provides otherwise or unless the
12 statutes are in conflict. The general provision
13 applies to this revision.

14 Revised Law

15 Sec. 2054.004. INSURANCE COMPANY UNDER TEXAS WORKERS'
16 COMPENSATION ACT. The company is an insurance company for purposes
17 of Subtitle A, Title 5, Labor Code. (V.T.I.C. Art. 5.76-3, Sec.
18 21(a).)

19 Source Law

20 Sec. 21. (a) The company is an insurance
21 company for purposes of Subtitle A, Title 5, Labor Code
22 (the Texas Workers' Compensation Act).

23 Revised Law

24 Sec. 2054.005. APPLICABILITY OF CODE. The company is
25 subject to this code. (V.T.I.C. Art. 5.76-3, Sec. 18(c) (part).)

26 Source Law

27 (c) The company is subject to all provisions of
28 this code and

29 Revised Law

30 Sec. 2054.006. AUTHORITY OF COMMISSIONER AND
31 DEPARTMENT. (a) The commissioner may regulate the company to the
32 same extent that the commissioner may regulate a mutual insurance
33 company.

34 (b) The company is subject to the jurisdiction of the
35 commissioner and department in the same manner as a private

insurance company. (V.T.I.C. Art. 5.76-3, Secs. 18(c) (part), 21(b).)

Source Law

[Sec. 18]

(c) [The company is subject] . . . to the jurisdiction of the commissioner and the department in the same manner as private insurance carriers.

[Sec. 21]

(b) All regulatory authority granted to the commissioner relating to a mutual insurance company is applicable to the company.

Revised Law

Sec. 2054.007. APPLICABILITY OF OPEN MEETINGS LAW. (a) Except as otherwise provided by Subsection (b), Chapter 551, Government Code, applies to the company.

(b) The board may hold closed meetings to consider:

(1) information relating to claims, rates, or the company's underwriting guidelines; or

(2) other information that would give advantage to a competitor or bidder. (V.T.I.C. Art. 5.76-3, Sec. 2(d) (part).)

Source Law

(d) Except as otherwise provided by this subsection, the company is subject to the open meetings law, Chapter 551, Government Code, and The board may hold closed meetings to consider and . . . information relating to claims, rates, the company's underwriting guidelines, and other information that would give advantage to competitors or bidders.

Revised Law

Sec. 2054.008. APPLICABILITY OF PUBLIC INFORMATION LAW. (a) In this section, "investigation file" means information the company compiles or maintains with respect to a company investigation authorized by law.

(b) To the extent consistent with this section, Chapter 552, Government Code, applies to the company.

(c) The board may refuse to disclose:

(1) information relating to claims, rates, or the company's underwriting guidelines; or

(2) other information that would give advantage to a

1 competitor or bidder.

2 (d) Except as provided by Subsection (e), a company
3 investigation file:

4 (1) is confidential and not subject to required
5 disclosure under Chapter 552, Government Code; and

6 (2) may be disclosed only:

7 (A) in a criminal proceeding;

8 (B) in a hearing conducted by the commission;

9 (C) on a judicial determination of good cause; or

10 (D) to a governmental agency, political
11 subdivision, or regulatory body if the disclosure is necessary or
12 proper for the enforcement of a law of this state, another state, or
13 the United States.

14 (e) Disclosure of information in an investigation file that
15 is contained in or derived from a claim file, an employer injury
16 report, or an occupational disease report is governed by any
17 confidentiality provision applicable to that information.
18 (V.T.I.C. Art. 5.76-3, Secs. 2(d) (part), 10.)

19 Source Law

20 [Sec. 2]

21 (d) Except as otherwise provided by this
22 subsection, the company is subject to . . . the open
23 records law, Chapter 552, Government Code. The board
24 may . . . refuse to release information relating to
25 claims, rates, the company's underwriting guidelines,
26 and other information that would give advantage to
27 competitors or bidders.

28 Sec. 10. (a) Information maintained in the
29 investigation files of the company is confidential and
30 may not be disclosed except:

31 (1) in a criminal proceeding;

32 (2) in a hearing conducted by the
33 commission;

34 (3) on a judicial determination of good
35 cause; or

36 (4) to a governmental agency, political
37 subdivision, or regulatory body if the disclosure is
38 necessary or proper for the enforcement of the laws of
39 this or another state or of the United States.

40 (b) Company investigation files are not open
41 records for purposes of the open records law, Chapter
42 552, Government Code.

43 (c) Information in an investigation file that is
44 information in or derived from a claim file, or an
45 employer injury report or occupational disease report,
46 is governed by the confidentiality provisions relating
47 to that information.

1 (d) For purposes of this section,
2 "investigation file" means any information compiled or
3 maintained by the company with respect to a company
4 investigation authorized by law.

5 Revised Law

6 Sec. 2054.009. CONFLICTS WITH CERTAIN INSURANCE LAWS. To
7 the extent of a conflict between this chapter and Chapter 883 or
8 another law of this state applicable to a nonlife mutual insurance
9 company, this chapter prevails. (V.T.I.C. Art. 5.76-3, Sec. 2(b)
10 (part).)

11 Source Law

12 (b) . . . In the event of a conflict between
13 this article and Chapter 15 of this code or another law
14 of this state applicable to a nonlife mutual insurance
15 company, this article controls.

16 Revisor's Note

17 Section 2(b), V.T.I.C. Article 5.76-3, provides
18 that Article 5.76-3, revised in this chapter, controls
19 to the extent of a conflict between the article and
20 V.T.I.C. Chapter 15. Chapter 15 is revised as Chapters
21 826 and 883 of this code. The revised law substitutes
22 a reference to Chapter 883 of this code for the
23 reference to Chapter 15 and does not reference Chapter
24 826 of this code for the reason stated in Revisor's
25 Note (2) to Section 2054.003.

26 [Sections 2054.010-2054.050 reserved for expansion]

27 SUBCHAPTER B. BOARD OF DIRECTORS

28 Revised Law

29 Sec. 2054.051. BOARD OF DIRECTORS; COMPOSITION. (a) The
30 company is governed by a board composed of nine members.

31 (b) The governor, with the advice and consent of the senate,
32 shall appoint five board members. The company's policyholders
33 shall elect the remaining members. (V.T.I.C. Art. 5.76-3, Sec.
34 3(a) (part).)

35 Source Law

36 Sec. 3. (a) The company is governed by a board
37 of directors composed of nine members, Five
38 members shall be appointed by the governor with the
39 advice and consent of the senate. The remaining

1 members shall be elected by the company's
2 policyholders.

3 Revised Law

4 Sec. 2054.052. QUALIFICATIONS. (a) Each board member must
5 be a resident of this state.

6 (b) An individual may not serve as a board member if the
7 individual, another individual related to the individual within the
8 second degree by consanguinity or affinity, or another individual
9 residing in the same household with the individual:

10 (1) is registered or licensed under this code or is
11 required to be registered or licensed under this code;

12 (2) is employed by or acts as a consultant to a person
13 registered or licensed under this code or required to be registered
14 or licensed under this code;

15 (3) owns, controls, has a financial interest in, or
16 participates in the management of an organization registered or
17 licensed under this code or required to be registered or licensed
18 under this code;

19 (4) receives a substantial tangible benefit from the
20 company or the department; or

21 (5) is an officer, employee, or consultant of an
22 association in the field of insurance.

23 (c) Subsection (b) does not prohibit an individual from
24 serving as a board member if the individual is only a policyholder
25 or a consumer of insurance or insurance products.

26 (d) An individual who is ineligible to serve on the board
27 under Subsection (b) may not serve as a board member until the first
28 anniversary of the date the condition that makes the individual
29 ineligible ends. (V.T.I.C. Art. 5.76-3, Secs. 3(a) (part), (d),
30 (h), (i).)

31 Source Law

32 Sec. 3. (a) . . . all of whom shall be
33 citizens of this state.

34 (d) A person may not serve as a member of the
35 board if the person, an individual related to the
36 person within the second degree by consanguinity or
37 affinity, or an individual residing in the same

household with the person:

(1) is registered or licensed under this code or is required to be registered or licensed under this code;

(2) is employed by or acts as a consultant to a person registered or licensed under this code or required to be registered or licensed under this code;

(3) owns, controls, has a financial interest in, or participates in the management of an organization registered or licensed under this code or required to be registered or licensed under this code;

(4) receives a substantial tangible benefit from the company or the Texas Department of Insurance; or

(5) is an officer, employee, or consultant of an association in the field of insurance.

(h) Subsection (d) of this section does not prohibit a person who is only a policyholder or a consumer of insurance or insurance products from serving as a member of the board.

(i) A person who is ineligible to serve on the board under Subsection (d) of this section may not serve as a member of the board for one year after the date on which the condition that makes the person ineligible ends.

Revisor's Note

Section 3(a), V.T.I.C. Article 5.76-3, provides that members of the Texas Mutual Insurance Company's board of directors must be "citizens of this state." The revised law substitutes "resident" for "citizen" because in the context of this section, "citizen" and "resident" are synonymous, and "resident" is more commonly used.

Revised Law

Sec. 2054.053. PRESIDING OFFICER; OTHER OFFICERS. (a) The governor shall designate a board member as the presiding officer to serve in that capacity at the pleasure of the governor.

(b) The board members shall elect annually any other officers the board considers necessary to perform the board's duties. (V.T.I.C. Art. 5.76-3, Sec. 3(k) (part).)

Source Law

(k) The governor shall designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the governor. The members of the board shall elect annually any other officers the board considers necessary for the performance of its duties. . . .

1 Revised Law

2 Sec. 2054.054. TERMS. (a) Board members serve staggered
3 six-year terms, with the terms of three members expiring July 1 of
4 each odd-numbered year.

5 (b) A board member whose term has expired shall continue to
6 serve until the member's successor is appointed by the governor or
7 is elected by the company's policyholders, as applicable.
8 (V.T.I.C. Art. 5.76-3, Sec. 3(b).)

9 Source Law

10 (b) The members of the board of directors serve
11 staggered six-year terms, with the terms of three
12 members expiring July 1 of each odd-numbered year. A
13 member of the board whose term has expired shall
14 continue to serve until the member's replacement is
15 elected by the policyholders or appointed by the
16 governor, as applicable.

17 Revised Law

18 Sec. 2054.055. VACANCIES. (a) The governor shall fill a
19 vacancy in the appointed board members by appointment with the
20 advice and consent of the senate.

21 (b) A vacancy in the elected board members shall be filled
22 as provided by the company's bylaws.

23 (c) If a vacancy occurs before the date the vacating
24 member's term expires, the successor member shall be appointed or
25 elected for a term that expires on the same date as the vacating
26 member's term. (V.T.I.C. Art. 5.76-3, Sec. 3(c).)

27 Source Law

28 (c) The governor shall fill a vacancy in the
29 appointed directors by appointment with the advice and
30 consent of the senate. A vacancy in the elected
31 directors shall be filled as provided by the company's
32 bylaws. If a vacancy occurs before the date on which
33 the vacating member's term is set to expire, the
34 successor member shall be elected or appointed for a
35 term to expire on the same date as the vacating
36 member's term.

37 Revised Law

38 Sec. 2054.056. GROUNDS FOR REMOVAL. (a) It is a ground for
39 removal from the board if a member:

40 (1) does not have at the time of appointment or
41 election the qualifications required by Section 2054.052;

1 (2) does not maintain during service on the board the
2 qualifications required by Section 2054.052;

3 (3) cannot because of illness or disability discharge
4 the member's duties for a substantial part of the term for which the
5 member is appointed or elected; or

6 (4) is absent from more than half of the regularly
7 scheduled board meetings that the member is eligible to attend
8 during a calendar year.

9 (b) The validity of a board action is not affected by the
10 fact that it is taken when a ground for removal of a board member
11 exists. (V.T.I.C. Art. 5.76-3, Secs. 3(e), (f).)

12 Source Law

13 (e) It is a ground for removal from the board if
14 a member:

15 (1) does not have at the time of
16 appointment the qualifications required by this
17 section;

18 (2) does not maintain during service on
19 the board the qualifications required by this section;

20 (3) cannot because of illness or
21 disability discharge the member's duties for a
22 substantial part of the term for which the member is
23 appointed; or

24 (4) is absent from more than half of the
25 regularly scheduled board meetings that the member is
26 eligible to attend during a calendar year.

27 (f) The validity of an action of the board is not
28 affected by the fact that it is taken when a ground for
29 removal of a board member exists.

30 Revisor's Note

31 Section 3(e), V.T.I.C. Article 5.76-3, which
32 relates to the grounds for removal of board members,
33 refers only to board members who are "appointed."
34 Section 3(a), Article 5.76-3, revised in relevant part
35 as Section 2054.051, provides for the appointment of
36 five members of the Texas Mutual Insurance Company's
37 board of directors and the election of the remaining
38 board members. Section 3(d), Article 5.76-3, revised
39 in Section 2054.052, establishes the qualifications
40 for board members and makes no distinction between
41 appointed members and elected members. The revised
42 law is drafted to add appropriate references to

1 elected board members so that the grounds for removal
2 apply equally to appointed and elected board members.

3 Revised Law

4 Sec. 2054.057. PROCEDURES FOR REMOVAL. (a) If the
5 president of the company has knowledge that a potential ground for
6 removal of a board member exists, the president shall notify the
7 presiding officer of the board of the potential ground.

8 (b) If the potential ground for removal involves an
9 appointed board member, the presiding officer shall notify the
10 governor and the attorney general that a potential ground for
11 removal exists.

12 (c) If the potential ground for removal involves the
13 presiding officer, the president shall notify the next highest
14 board officer, who shall notify the governor and the attorney
15 general that a potential ground for removal exists.

16 (d) If the potential ground for removal involves an elected
17 board member, the board shall act on the potential ground for
18 removal as provided by the company's bylaws. (V.T.I.C. Art.
19 5.76-3, Sec. 3(g).)

20 Source Law

21 (g) If the president has knowledge that a
22 potential ground for removal exists, the president
23 shall notify the chairman of the board of the potential
24 ground. If the potential ground for removal involves
25 an appointed board member, the chairman shall then
26 notify the governor and the attorney general that a
27 potential ground for removal exists. If the potential
28 ground for removal involves the chairman, the
29 president shall notify the next highest officer of the
30 board, who shall notify the governor and the attorney
31 general that a potential ground for removal exists. If
32 the potential ground for removal involves a board
33 member elected by the policyholders, the board shall
34 act on the potential ground for removal as provided by
35 the company's bylaws.

36 Revisor's Note

37 Section 3(g), V.T.I.C. Article 5.76-3, refers to
38 the "chairman" of the board. The revised law
39 substitutes "presiding officer" for "chairman" in this
40 section and throughout the revised law because, in the
41 context in which the term is used, the terms are

1 synonymous, and "presiding officer" is more modern and
2 is gender-neutral.

3 Revised Law

4 Sec. 2054.058. COMMITTEES AND SUBCOMMITTEES. The board may
5 create committees and subcommittees. (V.T.I.C. Art. 5.76-3, Sec.
6 3(k) (part).)

7 Source Law

8 (k) . . . The board may create committees and
9 subcommittees.

10 Revised Law

11 Sec. 2054.059. MEETINGS. (a) The board shall hold a
12 meeting at least once each calendar quarter, at other times at the
13 call of the presiding officer, and at times established by the
14 company's bylaws.

15 (b) A special meeting may be called by any two board members
16 on two days' notice. (V.T.I.C. Art. 5.76-3, Sec. 3(l).)

17 Source Law

18 (1) The board shall hold meetings at least once
19 each calendar quarter and at other times at the call of
20 the chairman and at times established in the company's
21 bylaws. Special meetings may be called by any two
22 members of the board on two days notice.

23 Revised Law

24 Sec. 2054.060. QUORUM. Five board members constitute a
25 quorum. (V.T.I.C. Art. 5.76-3, Sec. 3(m).)

26 Source Law

27 (m) Five board members constitutes a quorum.

28 Revised Law

29 Sec. 2054.061. COMPENSATION. A board member is entitled to
30 receive:

31 (1) fees for service on the board commensurate with
32 industry standards; and

33 (2) actual and necessary travel expenses and any other
34 expense incurred in performing the member's duties. (V.T.I.C. Art.
35 5.76-3, Sec. 3(j).)

1 Source Law

2 (j) Each member shall receive fees for service
3 on the board commensurate with industry standards and
4 actual and necessary travel expenses and expenses
5 incurred in the performance of the member's duties as a
6 member.

7 [Sections 2054.062-2054.100 reserved for expansion]

8 SUBCHAPTER C. MANAGEMENT OF COMPANY

9 Revised Law

10 Sec. 2054.101. GENERAL POWERS OF BOARD. The board has full
11 authority over the company and may:

12 (1) perform any act necessary or convenient to
13 administer the company or in connection with the company's
14 insurance business; and

15 (2) function in all aspects as the governing body of a
16 domestic mutual insurance company. (V.T.I.C. Art. 5.76-3, Sec.
17 4(a) (part).)

18 Source Law

19 Sec. 4. (a) The board has full power,
20 authority, and jurisdiction over the company. The
21 board may perform all acts necessary or convenient in
22 the administration of the company or in connection
23 with the insurance business to be carried on by the
24 company. In this regard, the board is empowered to
25 function in all aspects as a governing body of a
26 domestic mutual insurance company. . . .

27 Revisor's Note

28 Section 4(a), V.T.I.C. Article 5.76-3, refers to
29 the board of directors of the Texas Mutual Insurance
30 Company having "full power, authority, and
31 jurisdiction" over the company. The references to
32 "power" and "jurisdiction" are omitted from the
33 revised law because in this context, "power" and
34 "jurisdiction" are included within the meaning of
35 "full authority."

36 Revised Law

37 Sec. 2054.102. GENERAL DUTIES OF BOARD RELATING TO WORKERS'
38 COMPENSATION INSURANCE. The board shall:

39 (1) provide for engaging in the business of workers'
40 compensation insurance and for the delivery in this state of

workers' compensation insurance to the same extent as any other insurance company engaging in the business of workers' compensation insurance in this state;

(2) propose rates for workers' compensation insurance issued by the company; and

(3) exercise any other authority necessary to engage in the business of workers' compensation insurance. (V.T.I.C. Art. 5.76-3, Sec. 4(a) (part).)

Source Law

Sec. 4. (a) . . . The board shall:

(1) provide for the delivery in this state of workers' compensation insurance and for the transaction of workers' compensation insurance business to the same extent as any other insurance carrier transacting workers' compensation insurance business in this state;

(2) propose rates for workers' compensation insurance issued by the company; and

(3) exercise any other authority necessary to conduct a workers' compensation insurance business.

Revised Law

Sec. 2054.103. APPOINTMENT OF PRESIDENT. (a) The board shall appoint a president who serves at the pleasure of the board.

(b) The president must have proven successful experience as an executive at the general management level in the business of insurance.

(c) The president shall receive compensation as set by the board. (V.T.I.C. Art. 5.76-3, Sec. 4(d).)

Source Law

(d) The board shall appoint a president who shall serve at the pleasure of the board. The president must have proven successful experience as an executive at the general management level in the business of insurance. The president shall receive compensation as set by the board.

Revised Law

Sec. 2054.104. APPOINTMENT OF INTERNAL AUDITOR. The board shall appoint an internal auditor who serves at the pleasure of the board. (V.T.I.C. Art. 5.76-3, Sec. 4(c).)

Source Law

(c) The board shall appoint an internal auditor. The internal auditor serves at the pleasure of the

1 board.

2 Revised Law

3 Sec. 2054.105. PERSONAL LIABILITY OF BOARD MEMBERS,
4 OFFICERS, AND EMPLOYEES. In connection with the administration,
5 management, or conduct of the company, the company's business, or a
6 related matter, a board member, the president, or an officer or
7 employee of the company is not personally liable in the
8 individual's private capacity for an act performed or a contract or
9 other obligation entered into or undertaken in the individual's
10 official capacity in good faith and without intent to defraud.
11 (V.T.I.C. Art. 5.76-3, Sec. 6.)

12 Source Law

13 Sec. 6. Neither a member of the board nor the
14 president or any officer or employee of the company is
15 personally liable in the person's private capacity for
16 any act performed or for any contract or other
17 obligation entered into or undertaken in an official
18 capacity in good faith and without intent to defraud,
19 in connection with the administration, management, or
20 conduct of the company, its business, or other related
21 affairs.

22 Revised Law

23 Sec. 2054.106. PRINCIPAL OFFICE. The board shall maintain
24 the company's principal office in Travis County. (V.T.I.C. Art.
25 5.76-3, Sec. 3(n).)

26 Source Law

27 (n) The board shall maintain the principal
28 office of the company in Travis County, Texas.

29 Revised Law

30 Sec. 2054.107. CERTAIN RELATIONSHIPS WITH OTHER INSURERS
31 PROHIBITED. The company may not have:

32 (1) an affiliate, spin-off, or subsidiary that writes
33 a line of insurance other than workers' compensation insurance; or

34 (2) interlocking boards of directors with an insurer
35 that writes a line of insurance other than workers' compensation
36 insurance. (V.T.I.C. Art. 5.76-3, Sec. 4(b).)

37 Source Law

38 (b) The company may not have affiliates,
39 interlocking boards of directors, spinoffs, or
40 subsidiaries that write lines of insurance other than

workers' compensation insurance.

Revised Law

Sec. 2054.108. PROGRAM AND FACILITY ACCESSIBILITY. (a)
The company shall comply with federal and state laws that relate to
program and facility accessibility.

(b) The president shall prepare and maintain a written plan
that describes the manner in which an individual who does not speak
English can be provided reasonable access to the company's programs
and services.

(c) The board shall develop and implement policies that
provide the public with a reasonable opportunity to appear before
the board and to speak on any issue under the company's
jurisdiction. (V.T.I.C. Art. 5.76-3, Secs. 19(c), (d).)

Source Law

(c) The company shall comply with federal and
state laws related to program and facility
accessibility. The president shall also prepare and
maintain a written plan that describes how a person who
does not speak English can be provided reasonable
access to the company's programs and services.

(d) The board shall develop and implement
policies that provide the public with a reasonable
opportunity to appear before the board and to speak on
any issue under the jurisdiction of the company.

[Sections 2054.109-2054.150 reserved for expansion]

SUBCHAPTER D. OPERATION OF COMPANY; FINANCIAL ADMINISTRATION

Revised Law

Sec. 2054.151. PURPOSES OF COMPANY. The company shall:

- (1) serve as a competitive force in the marketplace;
- (2) guarantee the availability of workers'
compensation insurance in this state; and
- (3) serve as an insurer of last resort as provided by
Subchapter H. (V.T.I.C. Art. 5.76-3, Sec. 2(c).)

Source Law

(c) The company shall:
(1) serve as a competitive force in the
marketplace;

(2) guarantee the availability of workers'
compensation insurance in this state; and

(3) serve as an insurer of last resort as
provided under Article 5.76-4 of this code.

1 Compensation Insurance Fund. For tax years 1991-1996,
2 the surcharge was collected, but after the bonds were
3 defeased, the surcharge was no longer collected and
4 the legislature required the Texas Workers'
5 Compensation Insurance Fund to reimburse the surcharge
6 to insurance companies, who in turn had to refund the
7 surcharge to their policyholders. In January 2000, the
8 Texas Department of Insurance adopted procedures and
9 forms for this process, outlined in Rule XX of the
10 Texas Basic Manual of Rules, Classification and
11 Experience Rating Plan for Workers' Compensation and
12 Employers' Liability Insurance. That rule expired
13 December 31, 2001. The final maturity date of the
14 bonds issued under Article 5.76-5 was December 1,
15 2004, and on that date, the bonds were fully paid.

16 Revised Law

17 Sec. 2054.153. MEMBERSHIP IN TEXAS PROPERTY AND CASUALTY
18 INSURANCE GUARANTY ASSOCIATION. (a) In this section,
19 "association" means the Texas Property and Casualty Insurance
20 Guaranty Association.

21 (b) The company is:

- 22 (1) a member of and protected by the association; and
23 (2) subject to assessment under Chapter 462.

24 (c) Notwithstanding Subsection (b), the company is liable
25 only for an assessment by the association regarding a claim with a
26 date of injury occurring on or after January 1, 2000, and the
27 association, with respect to an insolvency of the company, is
28 liable only for a claim with a date of injury occurring on or after
29 that date. (V.T.I.C. Art. 5.76-3, Secs. 11(c), (d).)

30 Source Law

31 (c) The company is a member of and is protected
32 by the Texas Property and Casualty Insurance Guaranty
33 Association. The company is subject to assessment
34 under the Texas Property and Casualty Insurance
35 Guaranty Act (Article 21.28-C, Insurance Code).

36 (d) Notwithstanding any other provision of this
37 section, the company is only liable for assessments by

1 the Texas Property and Casualty Insurance Guaranty
2 Association regarding, and that association, with
3 respect to an insolvency of the company, is only liable
4 for, a claim with a date of injury that occurs on or
5 after January 1, 2000.

6 Revised Law

7 Sec. 2054.154. COMPANY ASSETS; STATE LIABILITY. (a) All
8 money, revenues, and other assets of the company belong solely to
9 the company and are governed by the laws applicable to domestic
10 mutual insurance companies.

11 (b) The state:

12 (1) covenants with the company's policyholders,
13 persons receiving workers' compensation benefits, and the company's
14 creditors that the state will not borrow, appropriate, or direct
15 payments from the company's money, revenues, or other assets for
16 any purpose; and

17 (2) has no liability or responsibility to those
18 policyholders, persons receiving benefits, or creditors if the
19 company is placed in conservatorship or receivership or becomes
20 insolvent. (V.T.I.C. Art. 5.76-3, Sec. 12(a).)

21 Source Law

22 Sec. 12. (a) All revenues, monies, and assets
23 of the company belong solely to the company and are
24 governed by the laws applicable to domestic mutual
25 insurance companies. The State of Texas covenants
26 with the policyholders of the company, persons
27 receiving workers' compensation benefits, and the
28 company's creditors that the state will not borrow,
29 appropriate, or direct payments from those revenues,
30 monies, and/or assets for any purpose. The state has
31 no liability to or responsibility to the
32 policyholders, persons receiving workers'
33 compensation benefits, or the creditors of the company
34 if the company is placed in conservatorship or
35 receivership, or becomes insolvent.

36 Revised Law

37 Sec. 2054.155. REQUIRED RESERVES. The company shall
38 establish and maintain reserves for losses on an actuarially sound
39 basis in accordance with Chapter 426. (V.T.I.C. Art. 5.76-3, Sec.
40 12(b).)

41 Source Law

42 (b) The company shall establish and maintain
43 reserves for losses on an actuarially sound basis in
44 accordance with Article 5.61 of this code.

1 Revised Law

2 Sec. 2054.156. RATIO OF CERTAIN PREMIUMS TO SURPLUS. The
3 company shall maintain a ratio of net written premiums on policies
4 written after reinsurance to surplus of not more than three to one.
5 (V.T.I.C. Art. 5.76-3, Sec. 12(c).)

6 Source Law

7 (c) The company must maintain a ratio of net
8 written premiums on policies written after reinsurance
9 to surplus of not more than 3.0 to one.

10 Revised Law

11 Sec. 2054.157. DISSOLUTION PROHIBITED. The company may
12 not be dissolved. (V.T.I.C. Art. 5.76-3, Sec. 2(j).)

13 Source Law

14 (j) The company may not be dissolved.

15 [Sections 2054.158-2054.200 reserved for expansion]

16 SUBCHAPTER E. EXAMINATIONS, REPORTS, AND FILINGS

17 Revised Law

18 Sec. 2054.201. EXAMINATION BY DEPARTMENT. (a) The
19 department shall examine the company in the manner and under the
20 conditions specified by Chapters 86 and 401 for the examination of
21 insurers.

22 (b) The company shall pay the costs of the examination.
23 (V.T.I.C. Art. 5.76-3, Secs. 18(a), (b).)

24 Source Law

25 Sec. 18. (a) The department shall conduct an
26 examination of the company in the manner and under the
27 conditions provided by Articles 1.15 through 1.19 of
28 this code for the examination of insurance carriers.

29 (b) The company shall pay the costs of the
30 examination.

31 Revisor's Note

32 Section 18(a), V.T.I.C. Article 5.76-3, requires
33 the Texas Department of Insurance to examine the Texas
34 Mutual Insurance Company in the manner and under the
35 conditions provided by V.T.I.C. Articles 1.15-1.19.
36 Those articles are revised in this code in Chapters 86
37 and 401. Chapter 401 includes provisions derived from

1 V.T.I.C. Article 1.04A. The revised law references
2 Chapter 401 in its entirety because the provisions of
3 Article 1.04A contained in that chapter are necessary
4 to construe the referenced provisions relating to
5 examination of an insurer and it is clear from the text
6 of Article 1.04A and of the portion of Section 18(c),
7 V.T.I.C. Article 5.76-3, revised in this chapter as
8 Section 2054.005, that Article 1.04A applies to the
9 Texas Mutual Insurance Company.

10 Revised Law

11 Sec. 2054.202. PROVIDING INFORMATION TO LEGISLATURE. The
12 company shall provide requested information to each appropriate
13 legislative committee in the manner requested by the committee.
14 (V.T.I.C. Art. 5.76-3, Sec. 4(e).)

15 Source Law

16 (e) The company shall provide requested
17 information to appropriate legislative committees in
18 the manner requested by those committees.

19 Revised Law

20 Sec. 2054.203. ANNUAL ACCOUNTING OF MONEY RECEIVED AND
21 DISBURSED. Each year, the company shall prepare a complete and
22 detailed written report accounting for all money the company
23 received and disbursed during the preceding fiscal year. (V.T.I.C.
24 Art. 5.76-3, Sec. 2(i).)

25 Source Law

26 (i) The company shall prepare annually a
27 complete and detailed written report accounting for
28 all funds received and disbursed by the company during
29 the preceding fiscal year.

30 Revisor's Note

31 Section 2(i), V.T.I.C. Article 5.76-3, refers to
32 certain "funds." The revised law substitutes "money"
33 for "funds" because, in context, the terms are
34 synonymous and the former is more commonly used.

35 Revised Law

36 Sec. 2054.204. ANNUAL STATEMENTS. (a) The company shall

1 file annual statements with the department and commission in the
2 same manner as is required of other workers' compensation insurance
3 companies.

4 (b) The department shall include in the department's annual
5 report under Section 32.021 a report on the company's condition.
6 (V.T.I.C. Art. 5.76-3, Sec. 12(e).)

7 Source Law

8 (e) The company shall file annual statements
9 with the department and the commission in the same
10 manner as required of other workers' compensation
11 insurance carriers, and the commissioner shall include
12 a report on the company's condition in the
13 commissioner's annual report under Section 32.021 of
14 this code.

15 Revisor's Note

16 Section 12(e), V.T.I.C. Article 5.76-3, requires
17 the commissioner of insurance to include a report on
18 the Texas Mutual Insurance Company's condition in the
19 "commissioner's" annual report under Section 32.021 of
20 this code. The revised law substitutes a reference to
21 the Texas Department of Insurance for the reference to
22 the commissioner because Section 32.021 requires the
23 department to file that annual report.

24 Revised Law

25 Sec. 2054.205. PUBLICATION AND FILING OF AUDITED REPORT.
26 The board shall:

27 (1) publish an independently audited report analyzing
28 the company's activities and fiscal condition during the preceding
29 fiscal year; and

30 (2) file the audited report with the department for
31 submission simultaneously with its annual financial report.
32 (V.T.I.C. Art. 5.76-3, Sec. 16(a).)

33 Source Law

34 Sec. 16. (a) The board shall publish an
35 independently audited report analyzing the company's
36 activities and fiscal condition during the preceding
37 fiscal year and shall file the report with the
38 department. The board shall file the audited report
39 with the department for submission simultaneously with
40 its annual financial report.

1 Revised Law

2 Sec. 2054.206. ADDITIONAL REPORTS. The company shall file
3 with the department and the commission all reports required of
4 other workers' compensation insurance companies. (Art. 5.76-3,
5 Sec. 16(b).)

6 Source Law

7 (b) The company shall file with the department
8 and the commission all reports required of other
9 workers' compensation insurers.

10 Revised Law

11 Sec. 2054.207. PERIODIC REPORTS TO BOARD. The president
12 shall make periodic reports to the board regarding:

13 (1) the company's status; and

14 (2) the company's investments. (V.T.I.C. Art. 5.76-3,
15 Sec. 13.)

16 Source Law

17 Sec. 13. The president shall make periodic
18 reports to the board with regard to the status of the
19 company and its investments.

20 [Sections 2054.208-2054.250 reserved for expansion]

21 SUBCHAPTER F. GENERAL POWERS AND DUTIES RELATING TO INSURANCE

22 Revised Law

23 Sec. 2054.251. RATEMAKING AUTHORITY. (a) Except as
24 provided by this section, the board may propose rates to be charged
25 by the company for insurance.

26 (b) The board shall engage the services of an independent
27 actuary who is a member in good standing with the Casualty Actuarial
28 Society or the American Academy of Actuaries to develop and
29 recommend actuarially sound rates.

30 (c) The company is subject to the requirements of Subchapter
31 A, Chapter 2053, and shall include the recommendations of the
32 independent actuary as part of the company's filing under that
33 subchapter. (V.T.I.C. Art. 5.76-3, Sec. 7(a).)

34 Source Law

35 Sec. 7. (a) Except as otherwise provided by
36 this subsection, the board shall have full power and
37 authority to propose rates to be charged by the company

1 for insurance. The board shall engage the services of
2 an independent actuary who is a member in good standing
3 with the Casualty Actuarial Society or the American
4 Academy of Actuaries to develop and recommend
5 actuarially sound rates. The company is subject to the
6 requirements of Article 5.55 of this code and shall
7 include the recommendations of its independent actuary
8 as part of its filing under that article.

9 Revised Law

10 Sec. 2054.252. AMOUNTS OF RATES. Rates charged by the
11 company for insurance must be set in amounts sufficient, when
12 invested, to:

- 13 (1) carry all claims to maturity;
14 (2) meet the reasonable expenses of conducting the
15 company's business; and
16 (3) maintain a reasonable surplus. (V.T.I.C. Art.
17 5.76-3, Sec. 7(b).)

18 Source Law

19 (b) Rates shall be set in amounts sufficient,
20 when invested, to:

- 21 (1) carry all claims to maturity;
22 (2) meet the reasonable expenses of
23 conducting the business of the company; and
24 (3) maintain a reasonable surplus.

25 Revised Law

26 Sec. 2054.253. MULTITIERED PREMIUM SYSTEMS. (a)
27 Notwithstanding any other provision of this code or another
28 insurance law of this state, the company may establish multitiered
29 premium systems to price workers' compensation insurance policies
30 to:

- 31 (1) insureds in the company's competitive programs;
32 and
33 (2) insureds to whom policies are offered by the
34 company under Subchapter H.

35 (b) The systems may provide for a higher or lower premium
36 payment by an insured based on:

- 37 (1) the company's evaluation of the underwriting
38 characteristics of the individual risk; and
39 (2) the appropriate premium to be charged for the
40 policy coverages.

1 (c) The systems must be filed in accordance with Subchapter
2 A, Chapter 2053. (V.T.I.C. Art. 5.76-3, Sec. 7(c).)

3 Source Law

4 (c) Notwithstanding any other provision of this
5 code or any other insurance law of this state, the
6 company may establish multitiered premium systems to
7 price workers' compensation insurance policies to
8 insureds in the company's competitive programs, as
9 well as to insureds to whom policies are offered by the
10 company under Article 5.76-4 of this code. Those
11 multitiered systems shall be filed in accordance with
12 Article 5.55 of this code. The systems may provide for
13 higher or lower premium payments by insureds based on
14 the company's evaluation of the underwriting
15 characteristics of the individual risk and the
16 appropriate premium to be charged for the policy
17 coverages.

18 Revised Law

19 Sec. 2054.254. CASH DIVIDENDS; CREDIT ON RENEWAL PREMIUM.

20 (a) The company may pay a cash dividend or allow a credit on the
21 renewal premium for a policyholder insured with the company, other
22 than a policyholder insured under Subchapter H.

23 (b) Payment of a cash dividend or allowance of a credit:

24 (1) must be made in accordance with criteria approved
25 by the board, which may consider the policyholder's safety record
26 and performance; and

27 (2) may be made only with the department's prior
28 approval. (V.T.I.C. Art. 5.76-3, Sec. 12(d).)

29 Source Law

30 (d) The company may pay cash dividends or allow
31 a credit on renewal premium for policyholders insured
32 with the company other than a policyholder insured
33 under Article 5.76-4 of this code, in accordance with
34 criteria approved by the board, which may consider the
35 policyholder's safety record and performance. A
36 dividend or credit requires prior approval of the
37 department.

38 Revised Law

39 Sec. 2054.255. APPOINTMENT OF AGENT NOT REQUIRED. (a)
40 Notwithstanding any other provision of this code or another
41 insurance law of this state, the company is not required to appoint
42 a general property and casualty agent to act as an agent for the
43 company.

44 (b) An agent who transacts business with the company acts as

1 an agent for the applicant and not as an agent for the company,
2 unless the company and the agent have entered into a written
3 agreement for the agent to act on behalf of the company. (V.T.I.C.
4 Art. 5.76-3, Sec. 5(d).)

5 Source Law

6 (d) Notwithstanding any other provision of this
7 code or another insurance law of this state, the
8 company is not required to appoint a local recording
9 agent to act as an agent for the company. An agent
10 transacting business with the company does so as an
11 agent for the applicant and not as an agent for the
12 company, unless there is an express written agreement
13 between the company and the agent that the agent acts
14 on behalf of the company.

15 Revisor's Note

16 Section 5(d), V.T.I.C. Article 5.76-3, refers to
17 a "local recording agent." Throughout this chapter,
18 the revised law substitutes a reference to a "general
19 property and casualty agent" because the category of
20 "local recording agent" was eliminated by Chapter 703,
21 Acts of the 77th Legislature, Regular Session, 2001,
22 and a person who performs the duties formerly
23 performed by a local recording agent in the context of
24 workers' compensation insurance is now regulated as a
25 "general property and casualty agent" under Chapter
26 4051 of this code.

27 Revised Law

28 Sec. 2054.256. WORK PRODUCT INFORMATION. (a) Information
29 submitted to the company by an insurance agent on behalf of an
30 employer, including a policy expiration date, is the work product
31 of the agent. The company may not use the information in any
32 marketing or direct sales activity.

33 (b) Except as otherwise required or permitted by Chapter
34 552, Government Code, the company may not provide to an insurance
35 agent information obtained from another insurance agent.

36 (c) This section does not prevent:

37 (1) an employer from designating another insurance
38 agent or the company as the agent of record; or

1 (2) the company from using information submitted to
2 the company under this section for underwriting or a fraud
3 investigation. (V.T.I.C. Art. 5.76-3, Sec. 5(e).)

4 Source Law

5 (e) Information submitted to the company by a
6 licensed agent on behalf of an employer, including a
7 policy expiration date, is the work product of that
8 agent, and the company may not use that information in
9 any marketing or direct sales activity. Except as
10 required or permitted by the open records law, Chapter
11 552, Government Code, the company may not provide
12 information obtained from a licensed agent to any
13 other licensed agent. This subsection does not
14 prevent an employer from designating another licensed
15 agent or the company as the agent of record and does
16 not prevent the company from using the information
17 submitted to the company under this subsection for the
18 purpose of underwriting or fraud investigation.

19 Revisor's Note

20 Section 5(e), V.T.I.C. Article 5.76-3, refers to
21 a "licensed agent." Throughout this chapter, the
22 revised law omits "licensed" as unnecessary in this
23 context because under Section 4001.101 of this code, a
24 person may not act as an agent unless the person holds
25 a license.

26 Revised Law

27 Sec. 2054.257. PAYMENT OF COMMISSION TO AGENT. The company
28 shall pay an insurance agent a reasonable commission on a workers'
29 compensation insurance policy that is written through the agent.
30 (V.T.I.C. Art. 5.76-3, Sec. 5(c).)

31 Source Law

32 (c) If the policy is written through a licensed
33 agent, the company shall pay the agent a reasonable
34 commission.

35 [Sections 2054.258-2054.300 reserved for expansion]

36 SUBCHAPTER G. ISSUANCE OF COVERAGE

37 Revised Law

38 Sec. 2054.301. APPLICATION FOR COVERAGE. An application
39 to the company for workers' compensation insurance coverage must
40 be:

41 (1) made on the form prescribed by the company; and

1 (2) submitted directly by the applicant or by a
2 general property and casualty agent on behalf of the applicant.
3 (V.T.I.C. Art. 5.76-3, Sec. 5(a).)

4 Source Law

5 Sec. 5. (a) Applications to the company for
6 workers' compensation insurance coverage shall be
7 submitted on forms prescribed by the company and shall
8 be made:

- 9 (1) directly by the applicant; or
10 (2) on behalf of the applicant by a local
11 recording agent.

12 Revised Law

13 Sec. 2054.302. POLICY FORMS. The company shall use the
14 uniform policy and standard policy forms prescribed by the
15 department under Section 2052.002. (V.T.I.C. Art. 5.76-3, Sec.
16 14.)

17 Source Law

18 Sec. 14. The company shall use the uniform
19 policy and standard policy forms prescribed by the
20 department under Articles 5.56 and 5.57 of this code.

21 Revisor's Note

22 Section 14, V.T.I.C. Article 5.76-3, refers to
23 certain policies and forms prescribed under V.T.I.C.
24 Articles 5.56 and 5.57. The relevant provisions of
25 those articles are revised as Section 2052.002 of this
26 code. The revised law is drafted accordingly.

27 Revised Law

28 Sec. 2054.303. DENIAL OF COVERAGE BASED ON CREDIT
29 RISK. The company may refuse to write insurance coverage for an
30 applicant that the company identifies as a credit risk unless the
31 applicant, before a policy is issued:

32 (1) pays the total estimated premium and related
33 charges; or

34 (2) provides security for payment of the total
35 estimated premium and related charges. (V.T.I.C. Art. 5.76-3, Sec.
36 5(b).)

37 Source Law

38 (b) If an applicant is identified by the company

1 as a credit risk, the company may refuse to write
2 insurance coverage if the applicant does not:

3 (1) pay the total estimated premium and
4 related charges before the policy is issued; or

5 (2) provide security for payment of the
6 total estimated premium and related charges before the
7 policy is issued.

8 Revised Law

9 Sec. 2054.304. CANCELLATION AND NONRENEWAL. The company
10 may cancel or refuse to renew coverage on a policyholder as provided
11 by Section 406.008, Labor Code. (V.T.I.C. Art. 5.76-3, Sec. 15.)

12 Source Law

13 Sec. 15. The company may cancel or refuse to
14 renew coverage on a policyholder as provided by
15 Section 406.008, Labor Code.

16 [Sections 2054.305-2054.350 reserved for expansion]

17 SUBCHAPTER H. COMPANY AS INSURER OF LAST RESORT

18 Revised Law

19 Sec. 2054.351. INSURER OF LAST RESORT. (a) Except as
20 provided by Section 2054.304 and this subchapter, the company may
21 not refuse to insure a risk that tenders:

22 (1) the necessary premium; and

23 (2) any applicable accident prevention service fee.

24 (b) If an applicant would be rejected for workers'
25 compensation insurance under the company's underwriting standards,
26 the company may not reject the risk, but shall insure the risk at a
27 higher premium as provided by the company's requirements. The
28 company may require the risk to meet other conditions considered
29 necessary to protect the company's interests. (V.T.I.C. Art.
30 5.76-4, Secs. (a), (b).)

31 Source Law

32 Art. 5.76-4. (a) The Texas Mutual Insurance
33 Company may not, except as otherwise provided by this
34 article and by Section 15, Article 5.76-3 of this code,
35 refuse to insure any risk that tenders the necessary
36 premium and any applicable accident prevention service
37 fees.

38 (b) If an applicant to the company would be
39 rejected for workers' compensation insurance under the
40 company's underwriting standards, the risk may not be
41 rejected, but shall be insured at a higher premium as
42 provided by the company's requirements. The risk may
43 be required to meet other conditions considered
44 necessary to protect the company's interests.

1 Revised Law

2 Sec. 2054.352. REQUIRED DECLINATION OF CERTAIN RISKS. (a)
3 In this section, "good faith" means honesty in fact in any conduct
4 or transaction.

5 (b) The company shall decline to insure a risk if:

6 (1) insuring the risk would cause the company to
7 exceed the premium-to-surplus ratios established by Section
8 2054.156; or

9 (2) the risk is not, in good faith, entitled to
10 insurance through the company. (V.T.I.C. Art. 5.76-4, Sec. (d).)

11 Source Law

12 (d) The company shall decline to insure any risk
13 if insuring that risk would cause the company to exceed
14 the premium-to-surplus ratios established by Article
15 5.76-3 of this code or if the risk is not in good faith
16 entitled to insurance through the company. For
17 purposes of this subsection only, "good faith" means
18 honesty in fact in any conduct or transaction.

19 Revised Law

20 Sec. 2054.353. REQUIRED INSURANCE OF CERTAIN COMMONLY OWNED
21 OR CONTROLLED ENTITIES. If the company suspects fraud or
22 identifies conditions that may result in acts of fraud, the company
23 may require an applicant for workers' compensation insurance
24 coverage who is identified as a risk for purposes of Section
25 2054.351(b) to insure all business entities that are commonly owned
26 or controlled by the applicant. (V.T.I.C. Art. 5.76-4, Sec. (g).)

27 Source Law

28 (g) If the company suspects fraud or identifies
29 conditions that may result in acts of fraud, the
30 company may require an applicant for workers'
31 compensation insurance coverage who is identified as a
32 risk for purposes of Subsection (b) of this article to
33 insure all business entities that are commonly owned
34 or commonly controlled by the applicant.

35 Revised Law

36 Sec. 2054.354. DEVELOPMENT AND PUBLICATION OF CERTAIN
37 INFORMATION. (a) The company shall develop statistical and other
38 information as necessary to allow the company to distinguish
39 between the company's:

40 (1) writings in the voluntary market; and

1 (2) writings as the insurer of last resort.

2 (b) The department shall develop and publish classification
3 relativities specifically designed for the risks insured under this
4 subchapter.

5 (c) On request, the company shall report statistical or
6 other information developed under Subsection (a) to:

7 (1) the department; or

8 (2) any successor entity for research and oversight of
9 the workers' compensation system of this state. (V.T.I.C. Art.
10 5.76-4, Secs. (c), (e), (h).)

11 Source Law

12 (c) The company shall develop statistical and
13 other information as necessary to allow the company to
14 distinguish between its writings in the voluntary
15 market and its writings as the insurer of last resort.

16 (e) The department shall develop and publish
17 classification relativities specifically designed for
18 the risks insured under this article.

19 (h) The company shall report the statistical and
20 other information developed under Subsection (c) of
21 this article on request to the Research and Oversight
22 Council on Workers' Compensation, or to any successor
23 entity for research and oversight of the workers'
24 compensation system of this state.

25 Revisor's Note

26 Section (h), V.T.I.C. Article 5.76-4, refers to
27 "the Research and Oversight Council on Workers'
28 Compensation." The revised law substitutes a
29 reference to the Texas Department of Insurance because
30 Chapter 10, Acts of the 78th Legislature, 3rd Called
31 Session, 2003, abolished the Research and Oversight
32 Council on Workers' Compensation, provided that a
33 reference in law to the council means the department or
34 the commissioner of insurance, as appropriate, and
35 transferred the council's functions to the department.

36 Revisor's Note
37 (End of Subchapter)

38 The revised law omits as obsolete Section (f),
39 V.T.I.C. Article 5.76-4, relating to the exchange of

1 information between the Texas Mutual Insurance Company
2 and the Texas workers' compensation insurance
3 facility. The Texas workers' compensation insurance
4 facility was transferred to the Texas Property and
5 Casualty Insurance Guaranty Association, and the
6 facility's organic law, V.T.I.C. Article 5.76-2, was
7 repealed by Chapter 594, Acts of the 75th Legislature,
8 Regular Session, 1997. The omitted law reads:

9 (f) The company and the Texas
10 workers' compensation insurance facility
11 may exchange information relating to actual
12 or suspected fraud by any applicant,
13 policyholder, claimant, agent, or insurer
14 with respect to workers' compensation
15 insurance policies issued by, or
16 applications for coverage submitted to, the
17 facility or the company. That information
18 may be kept confidential and is not subject
19 to disclosure under the open records act,
20 Chapter 424, Acts of the 63rd Legislature,
21 Regular Session, 1973 (Article 6252-17a,
22 Vernon's Texas Civil Statutes).

23 [Sections 2054.355-2054.400 reserved for expansion]

24 SUBCHAPTER I. APPEALS

25 Revised Law

26 Sec. 2054.401. APPEAL OF CERTAIN ACTIONS AND DECISIONS.

27 (a) An act or decision by the company to deny, cancel, or refuse to
28 renew a policy or risk insured under Subchapter H may be appealed to
29 the board not later than the 30th day after the date the affected
30 party receives actual notice that the act occurred or the decision
31 was made.

32 (b) The company shall:

33 (1) not later than the 30th day after the date the
34 request for hearing is made, hear the appeal; and

35 (2) not later than the 10th day before the date of the
36 hearing, notify the appellant in writing of the time and place of
37 the hearing.

38 (c) Not later than the 30th day after the last day of the
39 hearing, the board shall affirm, reverse, or modify the act or
40 decision appealed to the board.

1 (d) Unless the board specifically orders otherwise, a
2 hearing under this section does not suspend the operation of an act
3 or decision of the company. (V.T.I.C. Art. 5.76-3, Sec. 2(e).)

4 Source Law

5 (e) A decision by the company to deny, cancel,
6 or refuse to renew a policy or risk insured under
7 Article 5.76-4 of this code is appealable to the board
8 not later than the 30th day after the date on which the
9 affected party received actual notice that the act
10 occurred or that the decision was made. The company
11 shall hear the appeal not later than the 30th day after
12 the date on which the request for hearing is made and
13 shall notify the appellant in writing of the time and
14 place of the hearing not later than the 10th day before
15 the date of the hearing. Not later than the 30th day
16 after the last day of the hearing, the board shall
17 affirm, reverse, or modify the act appealed to the
18 board. A hearing under this subsection does not
19 suspend the operation of any act, ruling, decision, or
20 order of the company, unless the board specifically so
21 orders.

22 Revisor's Note

23 (1) Section 2(e), V.T.I.C. Article 5.76-3,
24 refers to "a decision" by the Texas Mutual Insurance
25 Company to deny, cancel, or refuse to renew certain
26 policies or risks. The revised law adds a reference to
27 "an act" by that company for consistency with the
28 remainder of Section 2(e), revised as this section,
29 which clearly applies to both an act and a decision by
30 that company, and with Section 2(f), V.T.I.C. Article
31 5.76-3, revised in this chapter as Section 2054.402.

32 (2) Section 2(e), V.T.I.C. Article 5.76-3,
33 refers to an "act, ruling, decision, or order" of the
34 Texas Mutual Insurance Company. The revised law omits
35 the references to "ruling" and "order" as included
36 within the meaning of an "act or decision."

37 Revised Law

38 Sec. 2054.402. REVIEW OF BOARD DECISION BY COMMISSIONER.

39 (a) A board decision under Section 2054.401 is subject to review by
40 the commissioner in the manner provided by Chapter 2001, Government
41 Code.

42 (b) The commissioner's review of a board decision does not

1 suspend the operation of an act or decision of the company unless
2 the commissioner specifically orders the suspension on a showing by
3 an aggrieved party of:

- 4 (1) immediate, irreparable injury, loss, or damage;
5 and
6 (2) probable success on the merits. (V.T.I.C. Art.
7 5.76-3, Sec. 2(f).)

8 Source Law

9 (f) A decision of the board under this section
10 is subject to review by the commissioner in the manner
11 provided by the administrative procedure law, Chapter
12 2001, Government Code. The commissioner's review of a
13 decision by the board does not suspend the operation of
14 any act, ruling, decision, or order of the company
15 unless the commissioner specifically so orders on a
16 showing by an aggrieved party of:

- 17 (1) immediate, irreparable injury, loss,
18 or damage; and
19 (2) probable success on the merits.

20 Revisor's Note

21 (1) Section 2(f), V.T.I.C. Article 5.76-3,
22 refers to an "act, ruling, decision, or order" of the
23 Texas Mutual Insurance Company. The revised law omits
24 the references to "ruling" and "order" for the reason
25 stated in Revisor's Note (2) to Section 2054.401.

26 (2) Section 2(f), V.T.I.C. Article 5.76-3,
27 provides that a decision of the board of directors of
28 the Texas Mutual Insurance Company under "this
29 section," meaning Section 2, Article 5.76-3, is
30 subject to review by the commissioner of insurance
31 under Chapter 2001, Government Code. The revised law
32 substitutes a reference to Section 2054.401 of this
33 chapter for "this section." The only references to a
34 decision of the board in Section 2, Article 5.76-3, are
35 contained in Sections 2(d) and (e). Section 2(d),
36 revised in pertinent part in Section 2054.008 of this
37 chapter, authorizes the board to refuse to disclose
38 certain information to the public. Section 2(e),
39 revised as Section 2054.401 of this chapter,

1 authorizes certain acts or decisions of the company to
2 be appealed to the board. It is clear from the context
3 that the reference in Section 2(f) to a board decision
4 is intended as a reference to a decision on appeal
5 under Section 2(e).

6 Revised Law

7 Sec. 2054.403. APPEAL OF COMMISSIONER'S DECISION. (a) A
8 person aggrieved by a decision of the commissioner under Section
9 2054.402 may appeal the decision to a district court.

10 (b) Judicial review under this section is governed by the
11 substantial evidence rule. (V.T.I.C. Art. 5.76-3, Sec. 2(g).)

12 Source Law

13 (g) A person aggrieved by the decision of the
14 commissioner may appeal that decision to the district
15 court. Judicial review under this section is governed
16 by the substantial evidence rule.

17 [Sections 2054.404-2054.450 reserved for expansion]

18 SUBCHAPTER J. CONTROL OF FRAUD AND OTHER VIOLATIONS

19 Revised Law

20 Sec. 2054.451. IDENTIFICATION AND INVESTIGATION PROGRAM
21 FOR FRAUD AND OTHER VIOLATIONS. (a) The company shall develop and
22 implement a program to identify and investigate acts of fraud and
23 violations of this code relating to workers' compensation insurance
24 by applicants, policyholders, claimants, agents, insurers, health
25 care providers, or other persons.

26 (b) The company shall cooperate with the commission to
27 compile and maintain information necessary to detect practices or
28 patterns of conduct that violate this code relating to workers'
29 compensation insurance or that violate Subtitle A, Title 5, Labor
30 Code. (V.T.I.C. Art. 5.76-3, Sec. 9(a).)

31 Source Law

32 Sec. 9. (a) The company shall develop and
33 implement a program to identify and investigate fraud
34 and violations of this code relating to workers'
35 compensation insurance by an applicant, policyholder,
36 claimant, agent, insurer, health care provider, or
37 other person. The company shall cooperate with the
38 commission to compile and maintain information
39 necessary to detect practices or patterns of conduct

1 that violate this code relating to the workers'
2 compensation insurance or Subtitle A, Title 5, Labor
3 Code (the Texas Workers' Compensation Act).

4 Revised Law

5 Sec. 2054.452. INVESTIGATIONS; COORDINATION WITH
6 COMMISSION. (a) The company may investigate cases of suspected
7 fraud and violations of this code relating to workers' compensation
8 insurance.

9 (b) The company may:

10 (1) coordinate the company's investigations with those
11 conducted by the commission to avoid duplication of efforts; and

12 (2) refer to the commission a case that is not
13 otherwise resolved by the company so that the commission may:

14 (A) perform any further investigation necessary
15 under the circumstances;

16 (B) conduct administrative violation
17 proceedings; and

18 (C) assess and collect penalties and
19 restitution. (V.T.I.C. Art. 5.76-3, Sec. 9(b).)

20 Source Law

21 (b) The company may conduct investigations of
22 cases of suspected fraud and violations of this code
23 relating to workers' compensation insurance. The
24 company may:

25 (1) coordinate its investigations with
26 those conducted by the commission to avoid duplication
27 of efforts; and

28 (2) refer cases that are not otherwise
29 resolved by the company to the commission to:

30 (A) perform any further
31 investigations that are necessary under the
32 circumstances;

33 (B) conduct administrative violation
34 proceedings; and

35 (C) assess and collect penalties and
36 restitution.

37 Revised Law

38 Sec. 2054.453. RESTITUTION PAYABLE TO COMPANY. Restitution
39 collected under Section 2054.452(b) must be paid to the company.
40 (V.T.I.C. Art. 5.76-3, Sec. 9(d).)

41 Source Law

42 (d) Restitution collected under Subsection (b)
43 of this section shall be paid to the company.

1 Revised Law

2 Sec. 2054.454. DEPOSIT AND USE OF PENALTIES COLLECTED BY
3 COMMISSION. A penalty collected under Section 2054.452(b):

4 (1) must be deposited in the general revenue fund to
5 the credit of the commission; and

6 (2) may be appropriated only to the commission to
7 offset the costs of the program under Section 2054.451. (V.T.I.C.
8 Art. 5.76-3, Sec. 9(e).)

9 Source Law

10 (e) Penalties collected under Subsection (b) of
11 this section shall be deposited in the general revenue
12 fund to the credit of the commission and shall be
13 appropriated to the commission to offset the costs of
14 this program.

15 Revised Law

16 Sec. 2054.455. FUNDING AGREEMENTS FOR CRIMINAL
17 PROSECUTIONS. The company may enter into funding agreements with
18 local prosecutors to prosecute offenses against the company.
19 (V.T.I.C. Art. 5.76-3, Sec. 9(c).)

20 Source Law

21 (c) The company may enter into funding
22 agreements with local prosecutors for the prosecution
23 of offenses against the company.

24 Revised Law

25 Sec. 2054.456. IMMUNITY FOR CERTAIN ACTIONS. The company,
26 the board, and company employees are not liable in a civil action
27 for an action taken in good faith in executing a duty under this
28 subchapter, including identifying or referring a person for
29 investigation of or prosecution for a possible administrative
30 violation or criminal offense. (V.T.I.C. Art. 5.76-3, Sec. 9(f).)

31 Source Law

32 (f) The board, company, and employees of the
33 company are not liable in a civil action for any action
34 made in good faith in the execution of duties under
35 this section including the identification and referral
36 of a person for investigation and prosecution for a
37 possible administrative violation or criminal
38 offense.

39 [Sections 2054.457-2054.500 reserved for expansion]

1 SUBCHAPTER K. ACCIDENT PREVENTION

2 Revised Law

3 Sec. 2054.501. DEFINITION. In this subchapter, "division"
4 means the commission's division of workers' health and safety.
5 (New.)

6 Revisor's Note

7 The revised law adds the definition of "division"
8 to avoid unnecessary repetition of the substance of
9 the definition in this subchapter.

10 Revised Law

11 Sec. 2054.502. REQUIREMENTS FOR PREVENTION OF INJURIES.
12 The company may make and enforce requirements for the prevention of
13 injuries to an employee of a policyholder or applicant for
14 insurance under this chapter. On reasonable notice, a policyholder
15 or applicant shall grant representatives of the company, the
16 commission, or the department free access to the premises of the
17 policyholder or applicant during regular working hours for purposes
18 of this section. (V.T.I.C. Art. 5.76-3, Sec. 8(a).)

19 Source Law

20 Sec. 8. (a) The company may make and enforce
21 requirements for the prevention of injuries to
22 employees of its policyholders or applicants for
23 insurance under this article. For this purpose,
24 representatives of the company, representatives of the
25 commission, or representatives of the department on
26 reasonable notice shall be granted free access to the
27 premises of each policyholder or applicant during
28 regular working hours.

29 Revised Law

30 Sec. 2054.503. GROUNDS FOR CANCELLATION OR DENIAL OF
31 COVERAGE. A failure or refusal by a policyholder or applicant for
32 insurance to comply with a requirement prescribed by the company
33 under Section 2054.502, or a failure or refusal to fully disclose
34 all information pertinent to insuring or servicing the policyholder
35 or applicant, constitutes sufficient grounds for the company to
36 cancel a policy or deny an application. (V.T.I.C. Art. 5.76-3,
37 Sec. 8(b).)

1 Source Law

2 (b) Failure or refusal by any such policyholder
3 or applicant to comply with any requirement prescribed
4 by the company for the prevention of injuries, or
5 failure or refusal to make full disclosure of all
6 information pertinent to the insuring or servicing of
7 the policyholder or applicant, constitutes sufficient
8 grounds for the company to cancel a policy or deny an
9 application for insurance.

10 Revised Law

11 Sec. 2054.504. SAFETY CONSULTATION FOR CERTAIN
12 INSUREDS. (a) A policyholder who is insured under Subchapter H
13 shall obtain a safety consultation:

14 (1) if the policyholder:

15 (A) has a Texas experience modifier greater than
16 1.25;

17 (B) has a national experience modifier greater
18 than 1.25 and estimated premium allocable to this state of \$2,500 or
19 more; or

20 (C) does not have an experience modifier but has
21 had a loss ratio greater than 0.70 in at least two of the three most
22 recent policy years for which information is available; or

23 (2) as required by the company, if the policyholder:

24 (A) has been in business for less than three
25 years; and

26 (B) meets the criteria established by the company
27 for a safety consultation.

28 (b) The criteria under Subsection (a)(2)(B) may include:

29 (1) the number and classification of employees;

30 (2) the policyholder's industry; and

31 (3) the policyholder's previous workers' compensation
32 experience in this state or another jurisdiction. (V.T.I.C. Art.
33 5.76-3, Secs. 8(c), (d).)

34 Source Law

35 (c) A policyholder in the company who is insured
36 under Article 5.76-4 of this code shall obtain a safety
37 consultation if the policyholder:

38 (1) has a Texas experience modifier
39 greater than 1.25;

40 (2) has a national experience modifier
41 greater than 1.25 and estimated premium allocable to

1 Texas of \$2,500 or more; or

2 (3) does not have an experience modifier
3 but has had a loss ratio greater than 0.70 in at least
4 two of the three most recent policy years for which
5 information is available.

6 (d) A policyholder in the company who is insured
7 under Article 5.76-4 of this code shall obtain a safety
8 consultation as required by the company if the
9 policyholder:

10 (1) has been in business for less than
11 three years; and

12 (2) meets criteria for a safety
13 consultation established by the company, which may
14 include the number and classification of employees,
15 the policyholder's industry, and the policyholder's
16 previous workers' compensation experience in this
17 state or another jurisdiction.

18 Revised Law

19 Sec. 2054.505. SAFETY CONSULTATION PROCEDURES. Not later
20 than the 30th day after the effective date of a policy, the
21 policyholder shall obtain a safety consultation required under
22 Section 2054.504 from a safety consultant. The safety consultant
23 must be:

24 (1) the company;

25 (2) the division; or

26 (3) a professional source approved for that purpose by
27 the division. (V.T.I.C. Art. 5.76-3, Sec. 8(e) (part).)

28 Source Law

29 (e) The policyholder shall obtain the safety
30 consultation not later than the 30th day after the
31 effective date of the policy and shall obtain the
32 safety consultation from the division of workers'
33 health and safety of the commission, the company, or
34 another professional source approved for that purpose
35 by the division of workers' health and safety. [The
36 safety consultant]

37 Revised Law

38 Sec. 2054.506. SAFETY CONSULTANT REPORT. A safety
39 consultant acting under this subchapter shall file a written report
40 with the commission and the policyholder specifying any hazardous
41 condition or practice identified in the safety consultation.
42 (V.T.I.C. Art. 5.76-3, Sec. 8(e) (part).)

43 Source Law

44 (e) . . . The safety consultant shall file a
45 written report with the commission and the
46 policyholder setting out any hazardous conditions or
47 practices identified by the safety consultation.

1 Revised Law

2 Sec. 2054.507. ACCIDENT PREVENTION PLAN. (a) If a safety
3 consultant identifies a hazardous condition or practice, the
4 policyholder and the safety consultant shall develop a specific
5 accident prevention plan that addresses the condition or practice.

6 (b) The safety consultant may approve an existing accident
7 prevention plan.

8 (c) The policyholder shall comply with the accident
9 prevention plan. (V.T.I.C. Art. 5.76-3, Sec. 8(f).)

10 Source Law

11 (f) The policyholder and the consultant shall
12 develop a specific accident prevention plan that
13 addresses the hazards identified by the consultant.
14 The safety consultant may approve an existing accident
15 prevention plan. The policyholder shall comply with
16 the accident prevention plan.

17 Revised Law

18 Sec. 2054.508. ACCIDENT INVESTIGATIONS; OTHER
19 MONITORING. The division may:

20 (1) investigate an accident that occurs at a work site
21 of a policyholder for whom an accident prevention plan was
22 developed under Section 2054.507; and

23 (2) otherwise monitor as the division determines
24 necessary the implementation of the accident prevention plan.
25 (V.T.I.C. Art. 5.76-3, Sec. 8(g).)

26 Source Law

27 (g) The division of workers' health and safety
28 of the commission may investigate accidents occurring
29 at the work sites of a policyholder for whom a plan has
30 been developed under Subsection (f) of this section,
31 and the division may otherwise monitor the
32 implementation of the accident prevention plan as it
33 finds necessary.

34 Revised Law

35 Sec. 2054.509. FOLLOW-UP INSPECTION. (a) Not earlier than
36 the 90th day after or later than the sixth month after the date an
37 accident prevention plan is developed under Section 2054.507, the
38 division shall conduct a follow-up inspection of the policyholder's
39 premises in accordance with rules adopted by the commission.

1 (b) The commission may require the participation of the
2 safety consultant who performed the initial consultation and
3 developed the accident prevention plan.

4 (c) If the division determines that a policyholder has
5 complied with the terms of the accident prevention plan or has
6 implemented other accepted corrective measures, the division shall
7 certify that determination.

8 (d) If the division determines that a policyholder has
9 failed or refuses to implement the accident prevention plan or
10 other suitable hazard abatement measures, the policyholder may
11 elect to cancel coverage not later than the 30th day after the date
12 of the determination. (V.T.I.C. Art. 5.76-3, Sec. 8(h) (part).)

13 Source Law

14 (h) In accordance with rules adopted by the
15 commission, not earlier than 90 days or later than six
16 months after the development of an accident prevention
17 plan under Subsection (f) of this section, the
18 division of workers' health and safety of the
19 commission shall conduct a follow-up inspection of the
20 policyholder's premises. The commission may require
21 the participation of the safety consultant who
22 performed the initial consultation and developed the
23 safety plan. If the division determines that the
24 policyholder has complied with the terms of the
25 accident prevention plan or has implemented other
26 accepted corrective measures, the division shall so
27 certify. If a policyholder fails or refuses to
28 implement the accident prevention plan or other
29 suitable hazard abatement measures, the policyholder
30 may elect to cancel coverage not later than the 30th
31 day after the date of the division
32 determination. . . .

33 Revised Law

34 Sec. 2054.510. CANCELLATION OF COVERAGE BY COMPANY;
35 IMPOSITION OF ADMINISTRATIVE PENALTY. (a) If a policyholder
36 described by Section 2054.509(d) does not elect to cancel coverage
37 as provided by that section:

38 (1) the company may cancel the coverage; or

39 (2) the commission may impose an administrative
40 penalty on the policyholder.

41 (b) The amount of an administrative penalty under
42 Subsection (a)(2) may not exceed \$5,000. Each day of noncompliance
43 constitutes a separate violation.

1 (c) In imposing an administrative penalty, the commission
2 may consider any matter that justice may require and shall
3 consider:

4 (1) the seriousness of the violation, including the
5 nature, circumstances, consequences, extent, and gravity of the
6 prohibited act;

7 (2) the history and extent of previous administrative
8 violations;

9 (3) the demonstrated good faith of the violator,
10 including actions taken to rectify the consequences of the
11 prohibited act;

12 (4) any economic benefit resulting from the prohibited
13 act; and

14 (5) the penalty necessary to deter future violations.

15 (d) A penalty collected under this section must be:

16 (1) deposited in the general revenue fund to the
17 credit of the commission; or

18 (2) reappropriated to the commission to offset the
19 costs of implementing and administering this subchapter. (V.T.I.C.
20 Art. 5.76-3, Secs. 8(h) (part), (i).)

21 Source Law

22 (h) . . . If the policyholder does not elect to
23 cancel, the company may cancel the coverage or the
24 commission may assess an administrative penalty not to
25 exceed \$5,000. Each day of noncompliance constitutes
26 a separate violation. Penalties collected under this
27 section shall be deposited in the general revenue fund
28 to the credit of the commission or reappropriated to
29 the commission to offset the costs of implementing and
30 administering this section.

31 (i) In assessing an administrative penalty, the
32 commission may consider any matter that justice may
33 require and shall consider:

34 (1) the seriousness of the violation,
35 including the nature, circumstances, consequences,
36 extent, and gravity of the prohibited act;

37 (2) the history and extent of previous
38 administrative violations;

39 (3) the demonstrated good faith of the
40 violator, including actions taken to rectify the
41 consequences of the prohibited act;

42 (4) any economic benefit resulting from
43 the prohibited act; and

44 (5) the penalty necessary to deter future
45 violations.

1 Revised Law

2 Sec. 2054.511. CONTINUING COMPLIANCE WITH SUBCHAPTER. The
3 procedures established under this subchapter must be followed each
4 year the policyholder meets the criteria established by Section
5 2054.504(a)(1). (V.T.I.C. Art. 5.76-3, Sec. 8(j).)

6 Source Law

7 (j) The procedures established under this
8 section must be followed each year the policyholder
9 meets the qualifications established under Subsection
10 (c) of this section and is insured through Article
11 5.76-4 of this code.

12 Revisor's Note

13 Section 8(j), V.T.I.C. Article 5.76-3, includes a
14 reference to a policyholder who meets certain criteria
15 and "is insured through Article 5.76-4 of this code."
16 The revised law omits the quoted language as redundant
17 and unnecessary because a policyholder does not meet
18 the referenced criteria unless the policyholder is
19 insured as described by the quoted language.

20 Revised Law

21 Sec. 2054.512. FEES FOR SERVICES. The commission shall:

22 (1) charge a policyholder for the reasonable cost of
23 services provided to the policyholder under Sections 2054.505,
24 2054.506, 2054.507, 2054.509, and 2054.510(a); and

25 (2) set the fees for the services at a
26 cost-reimbursement level, including a reasonable allocation of the
27 commission's administrative costs. (V.T.I.C. Art. 5.76-3, Sec.
28 8(k).)

29 Source Law

30 (k) The commission shall charge the
31 policyholder for the reasonable cost of services
32 provided under Subsections (e), (f), and (h) of this
33 section. The fees for those services shall be set at a
34 cost-reimbursement level including a reasonable
35 allocation of the commission's administrative costs.

36 Revised Law

37 Sec. 2054.513. ENFORCEMENT OF SUBCHAPTER. The compliance
38 and practices division of the commission shall enforce compliance

1 with this subchapter through the administrative violation
2 proceedings under Chapter 415, Labor Code. (V.T.I.C. Art. 5.76-3,
3 Sec. 8(1).)

4 Source Law

5 (1) The compliance and practices division of the
6 commission shall enforce compliance with this section
7 through the administrative violation proceedings
8 under Chapter 415, Labor Code.

9 [Sections 2054.514-2054.550 reserved for expansion]

10 SUBCHAPTER L. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

11 Revised Law

12 Sec. 2054.551. PUBLIC INTEREST INFORMATION. (a) The
13 company shall prepare information of public interest describing the
14 functions of the company and the procedures by which complaints are
15 submitted to and resolved by the company.

16 (b) The company shall make the information available to the
17 public and appropriate state agencies. (V.T.I.C. Art. 5.76-3, Sec.
18 19(a).)

19 Source Law

20 Sec. 19. (a) The company shall prepare
21 information of public interest describing the
22 functions of the company and the procedures by which
23 complaints are filed with and resolved by the company.
24 The company shall make the information available to
25 the public and appropriate state agencies.

26 Revised Law

27 Sec. 2054.552. COMPLAINTS. (a) The company shall
28 establish methods by which consumers and service recipients are
29 notified of the name, mailing address, and telephone number of the
30 company for the purpose of directing a complaint to the company.

31 (b) The company may provide for the notice:

32 (1) by a supplement or endorsement to a written
33 policy;

34 (2) on a sign prominently displayed in the place of
35 business of each regional office of the company; or

36 (3) in a bill for services provided by the company.
37 (V.T.I.C. Art. 5.76-3, Sec. 19(b).)

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6 Sec. 2054.553. COMPLAINT RECORD. (a) The company shall
7 keep information about each written complaint filed with the
8 company. The information must include:

9 (1) the date the complaint is received;

0 (2) the name of the complainant;

1 (3) the subject matter of the complaint;

2 (4) a record of each person contacted in relation to
3 the complaint;

4 (5) a summary of the results of the review or
5 investigation of the complaint; and

6 (6) for a complaint for which the company takes no
7 action, an explanation of the reason the complaint was closed
8 without action.

9 (b) For each written complaint the company receives and has
0 authority to resolve, the company shall:

(1) provide the company's policies and procedures relating to complaint investigation and resolution to the person filing the complaint and each person or entity that is a subject of the complaint; and

5 (2) at least quarterly and until final disposition of
6 the complaint, notify the person filing the complaint and each
7 person or entity that is a subject of the complaint of the status of
8 the complaint unless the notification would jeopardize an
9 undercover investigation. (V.T.I.C. Art. 5.76-3, Sec. 20.)

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(b) For each written complaint that the company has authority to resolve, the company shall provide to the person filing the complaint and the persons or entities complained about the company's policies and procedures pertaining to complaint investigation and resolution. The company, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and the persons or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation.

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1 amount of \$300 million. Those bonds were registered by
2 the comptroller and approved by the attorney general
3 in December 1991. The bonds had a maturity date of
4 December 1, 2004, and on that date were fully paid.
5 The omitted law reads:

6 Art. 5.76-5

7 Sec. 1. The legislature finds that
8 the issuance of bonds for the purposes of
9 providing a method to raise funds to provide
10 workers' compensation insurance coverage
11 through the Texas Workers' Compensation
12 Insurance Fund and workers' compensation
13 insurance coverage for employers in this
14 state is for the benefit of the public and
15 in furtherance of a public purpose.

16 Sec. 2. In this article:

17 (1) "Bond resolution" means the
18 resolution or order authorizing the bonds
19 to be issued under this article.

20 (2) "Board" means the board of
21 directors of the Texas Public Finance
22 Authority.

23 (3) "Fund" means the Texas
24 Workers' Compensation Insurance Fund.

25 Sec. 3. (a) On behalf of the fund,
26 the Texas Public Finance Authority shall
27 issue revenue bonds to:

28 (1) establish the initial
29 surplus of the fund;

30 (2) establish and maintain
31 reserves;

32 (3) pay initial operating
33 costs;

34 (4) pay costs related to
35 issuance of the bonds; and

36 (5) pay other costs related to
37 the bonds as may be determined by the board.

38 (b) To the extent not inconsistent
39 with this article, the Texas Public Finance
40 Authority Act (Article 601d, Vernon's Texas
41 Civil Statutes) applies to bonds issued
42 under this article. In the event of a
43 conflict, this article controls.

44 Sec. 4. The following Acts apply to
45 bonds issued under this article to the
46 extent consistent with this article:

47 (1) Chapter 656, Acts of the
48 68th Legislature, Regular Session, 1983
49 (Article 717q, Vernon's Texas Civil
50 Statutes);

51 (2) Chapter 3, Acts of the 61st
52 Legislature, Regular Session, 1969 (Article
53 717k-2, Vernon's Texas Civil Statutes);

54 (3) the Bond Procedures Act of
55 1981 (Article 717k-6, Vernon's Texas Civil
56 Statutes);

57 (4) Chapter 1078, Acts of the
58 70th Legislature, Regular Session, 1987
59 (Article 717k-7, Vernon's Texas Civil
60 Statutes);

61 (5) Article 3, Chapter 53, Acts
62 of the 70th Legislature, 2nd Called

1 Session, 1987 (Article 717k-8, Vernon's
2 Texas Civil Statutes);

3 (6) Article 717k-9, Revised
4 Statutes; and

5 (7) Chapter 400, Acts of the
6 66th Legislature, 1979 (Article 717m-1,
7 Vernon's Texas Civil Statutes).

8 Sec. 5. The Texas Public Finance
9 Authority may issue, on behalf of the fund,
10 bonds in a total amount not to exceed \$300
11 million.

12 Sec. 6. (a) Bonds may be issued at
13 public or private sale.

14 (b) Bonds may mature not more than 20
15 years after the date issued.

16 (c) Bonds must be issued in the name
17 of the fund.

18 Sec. 7. In a bond resolution, the
19 board may make additional covenants with
20 respect to the bonds and the designated
21 income and receipts of the fund pledged to
22 their payment and may provide for the flow
23 of funds and the establishment,
24 maintenance, and investment of funds and
25 accounts with respect to the bonds.

26 Sec. 8. (a) A bond resolution may
27 establish special accounts including an
28 interest and sinking fund account, reserve
29 account, and other accounts.

30 (b) The president of the fund or the
31 president's designee shall administer the
32 accounts in accordance with Article 5.76-3
33 of this code.

34 Sec. 9. (a) Bonds are payable only
35 from the maintenance tax surcharge
36 established in Section 10 of this article or
37 other sources the fund is authorized to
38 levy, charge, and collect in connection
39 with paying any portion of the bonds.

40 (b) Bonds are obligations solely of
41 the fund. Bonds do not create a pledging,
42 giving, or lending of the faith, credit, or
43 taxing authority of this state.

44 (c) Each bond must include a
45 statement that the state is not obligated to
46 pay any amount on the bond and that the
47 faith, credit, and taxing authority of this
48 state are not pledged, given, or lent to
49 those payments.

50 (d) Each bond issued under this
51 article must state on its face that the bond
52 is payable solely from the revenues pledged
53 for that purpose and that the bond does not
54 and may not constitute a legal or moral
55 obligation of the state.

56 Sec. 10. (a) A maintenance tax
57 surcharge is assessed against:

58 (1) each insurance company
59 writing workers' compensation insurance in
60 this state;

61 (2) each certified self-insurer
62 as provided in Chapter D, Article 3, Texas
63 Workers' Compensation Act (Article
64 8308-3.51 et seq., Vernon's Texas Civil
65 Statutes); and

66 (3) the fund.

67 (b) The maintenance tax surcharge
68 shall be set in an amount sufficient to pay

1 all debt service on the bonds. The
2 maintenance tax surcharge is set by the
3 commissioner in the same time and shall be
4 collected by the comptroller on behalf of
5 the fund in the same manner as provided
6 under Article 5.68 of this code.

7 (c) On receiving notice of the rate
8 of assessment set by the Texas Workers'
9 Compensation Commission under Section 2.23,
10 Texas Workers' Compensation Act (Article
11 8308-2.23, Vernon's Texas Civil Statutes),
12 the State Board of Insurance shall increase
13 the tax rate to a rate sufficient to pay all
14 debt service on the bonds subject to the
15 maximum tax rate established by Section
16 2.22, Texas Workers' Compensation Act
17 (Article 8308-2.22, Vernon's Texas Civil
18 Statutes). If the resulting tax rate is
19 insufficient to pay all costs for the Texas
20 Workers' Compensation Commission and all
21 debt service on the bonds, the State Board
22 of Insurance may assess an additional
23 surcharge not to exceed one percent of gross
24 workers' compensation premiums to cover all
25 debt service on the bonds. In this code,
26 the maintenance tax surcharge includes the
27 additional maintenance tax assessed under
28 this subsection and the surcharge assessed
29 under this subsection to pay all debt
30 service of the bonds.

31 (d) The fund and each insurance
32 company may pass through the maintenance
33 tax surcharge to each of its policyholders.

34 (e) As a condition of engaging in the
35 business of insurance in this state, an
36 insurance company writing workers'
37 compensation insurance in this state agrees
38 that if the company leaves the workers'
39 compensation insurance market in this state
40 it remains obligated to pay, until the bonds
41 are retired, the company's share of the
42 maintenance tax surcharge assessed under
43 this section in an amount proportionate to
44 that company's share of the workers'
45 compensation insurance market in this state
46 as of the last complete reporting period
47 before the date on which the company ceases
48 to engage in the insurance business in this
49 state. The proportion assessed against the
50 company shall be based on the company's
51 workers' compensation insurance gross
52 premiums for the company's last reporting
53 period. However, a company is not required
54 to pay the proportionate amount in any year
55 in which the surcharge assessed against
56 insurance companies continuing to write
57 workers' compensation insurance in this
58 state is sufficient to service the bond
59 obligation. The abolition of the fund under
60 Section 2(d), Article 5.76-3, Insurance
61 Code, does not affect the liability of an
62 insurance company for a maintenance tax
63 surcharge assessed under this section.

64 Sec. 11. The bonds issued under this
65 article, and any interest from the bonds,
66 and all assets pledged to secure the payment
67 of the bonds are free from taxation by the
68 state or a political subdivision of this

1	state.	
2	Sec. 12. The bonds issued under this	
3	article constitute authorized investments	
4	under Article 2.10 and Subpart A, Part I,	
5	Article 3.39 of this code.	
6	Sec. 13. The state pledges to and	
7	agrees with the owners of any bonds issued	
8	in accordance with this article that the	
9	state will not limit or alter the rights	
10	vested in the fund to fulfill the terms of	
11	any agreements made with the owners of the	
12	bonds or in any way impair the rights and	
13	remedies of those owners until the bonds,	
14	any premium or interest, and all costs and	
15	expenses in connection with any action or	
16	proceeding by or on behalf of those owners	
17	are fully met and discharged. The fund may	
18	include this pledge and agreement of the	
19	state in any agreement with the owners of	
20	the bonds.	
21	Sec. 14. A writ of mandamus and all	
22	other legal and equitable remedies are	
23	available to any party at interest to	
24	require the fund and any other party to	
25	carry out agreements and to perform	
26	functions and duties under this article,	
27	the Texas Constitution, or a bond	
28	resolution.	
29	Sec. 15. (a) Notwithstanding any	
30	other provision of this article, effective	
31	September 1, 2001:	
32	(1) the fund is operated as the	
33	Texas Mutual Insurance Company as provided	
34	by Article 5.76-3 of this code; and	
35	(2) additional bonds may not be	
36	issued under this article.	
37	(b) The Texas Mutual Insurance	
38	Company may exercise any power, and is	
39	liable to perform any duty, imposed on the	
40	fund as this article existed immediately	
41	before September 1, 2001.	
42	[Chapters 2055-2100 reserved for expansion]	
43	SUBTITLE F. OTHER COVERAGE	
44	CHAPTER 2101. COVERAGE FOR AIRCRAFT	
45	Sec. 2101.001. APPLICABILITY OF CHAPTER	1102
46	Sec. 2101.002. FILING OF POLICY FORMS AND ENDORSEMENTS	
47	MAY BE REQUIRED	1102
48	Sec. 2101.003. DISAPPROVAL OF POLICY FORM OR	
49	ENDORSEMENT	1102
50	Sec. 2101.004. CERTAIN CONTRACTS OR OTHER AGREEMENTS	
51	VOID	1103
52	Sec. 2101.005. RULES	1104

1 CHAPTER 2101. COVERAGE FOR AIRCRAFT

2 Revised Law

3 Sec. 2101.001. APPLICABILITY OF CHAPTER. This chapter
4 applies only to aircraft hull and aircraft liability insurance.
5 (V.T.I.C. Art. 5.90 (part).)

6 Source Law

7 Art. 5.90. [When the State Board of Insurance
8 finds that a public need exists for the regulation of]
9 aircraft hull and aircraft liability insurance,
10

11 Revised Law

12 Sec. 2101.002. FILING OF POLICY FORMS AND ENDORSEMENTS MAY
13 BE REQUIRED. If the commissioner finds that a public need exists
14 to regulate the insurance subject to this chapter, the commissioner
15 by order may require each insurer issuing that insurance in this
16 state to file with the department each policy form and endorsement
17 the insurer uses to write the insurance. (V.T.I.C. Art. 5.90
18 (part).)

19 Source Law

20 Art. 5.90. When the State Board of Insurance
21 finds that a public need exists for the regulation of
22 [aircraft hull and aircraft liability insurance,] it
23 may, by board order, require all insurers issuing any
24 form of aircraft hull and aircraft liability insurance
25 in Texas to file with the board all policy forms and
26 endorsements used by each insurer in the writing of
27 such insurance. . . .

28 Revisor's Note

29 V.T.I.C. Article 5.90 refers to the "State Board
30 of Insurance" and the "board." Chapter 685, Acts of
31 the 73rd Legislature, Regular Session, 1993,
32 abolished the board and transferred the board's
33 functions to the commissioner of insurance and the
34 Texas Department of Insurance. Throughout this
35 chapter, references to the board have been changed
36 appropriately.

37 Revised Law

38 Sec. 2101.003. DISAPPROVAL OF POLICY FORM OR ENDORSEMENT.
39 (a) The commissioner may disapprove the use of a policy form or

1 endorsement filed under this chapter.

2 (b) After the commissioner disapproves a policy form or
3 endorsement, an insurer may not use the form or endorsement.
4 (V.T.I.C. Art. 5.90 (part).)

5 Source Law

6 Art. 5.90. . . . The board may disapprove the
7 use of any form or endorsement so filed and no insurer
8 may thereafter use such disapproved form or
9 endorsement. . . .

10 Revised Law

11 Sec. 2101.004. CERTAIN CONTRACTS OR OTHER AGREEMENTS
12 VOID. (a) A contract or other agreement is void if the contract
13 or agreement is not written into:

14 (1) the application for an insurance policy subject to
15 this chapter; or

16 (2) the policy.

17 (b) A contract or other agreement that is void under
18 Subsection (a) is:

19 (1) a violation of this chapter; and

20 (2) sufficient cause to revoke the insurer's
21 certificate of authority to write aircraft insurance in this state.

22 (V.T.I.C. Art. 5.90 (part).)

23 Source Law

24 Art. 5.90. . . . Any contract or agreement not
25 written into the application, if any, or policy shall
26 be void and of no effect and in violation of the
27 provisions of this subchapter and shall be sufficient
28 cause for revocation of license of the insurer to write
29 aircraft insurance within this state.

30 Revisor's Note

31 (1) V.T.I.C. Article 5.90 provides that certain
32 contracts or agreements are "void and of no effect."
33 The revised law omits "of no effect" as unnecessary. A
34 contract or agreement that is void has no effect.

35 (2) V.T.I.C. Article 5.90 refers to the
36 revocation of a "license" of an insurer. The revised
37 law substitutes "certificate of authority" for
38 "license" because "certificate of authority" is the

term used throughout this code in relation to an entity's authority to engage in business.

Revised Law

Sec. 2101.005. RULES. When the commissioner acts under this chapter, the commissioner may adopt any rules that are necessary to carry out the provisions of this chapter or Chapter 251 or 256. (V.T.I.C. Art. 5.92.)

Source Law

Art. 5.92. When the State Board of Insurance acts under Article 5.90, it shall have authority to make any rules that are necessary to carry out the provisions of this subchapter.

Revisor's Note

V.T.I.C. Article 5.92 authorizes the State Board of Insurance, meaning the commissioner of insurance for the reason stated in the revisor's note to Section 2101.002 of this chapter, to adopt rules necessary to carry out the provisions of "this subchapter," meaning Subchapter K, V.T.I.C. Chapter 5. Subchapter K, Chapter 5, consists of V.T.I.C. Articles 5.90 and 5.92, which are revised as this chapter, and V.T.I.C. Article 5.91, which is revised in Chapters 251 and 256 of this code. The revised law is drafted accordingly.

[Chapters 2102-2150 reserved for expansion]

SUBTITLE G. POOLS, GROUPS, PLANS, AND SELF-INSURANCE
CHAPTER 2151. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2151.001. DEFINITIONS 1105

[Sections 2151.002-2151.050 reserved for expansion]

SUBCHAPTER B. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION

Sec. 2151.051. NATURE AND COMPOSITION OF ASSOCIATION 1107

Sec. 2151.052. AUTHORITY OF GOVERNING COMMITTEE 1107

Sec. 2151.053. MEMBERSHIP OF GOVERNING COMMITTEE 1108

Sec. 2151.054. ELIGIBILITY TO SERVE AS INSURER
REPRESENTATIVE 1109

1 Insurance Plan Association.

2 (2) "Authorized insurer" means an insurer authorized
3 by the department to write automobile liability coverage under this
4 title. Except as provided by Section 2251.204, the term does not
5 include a county mutual insurance company organized under Chapter
6 912.

7 (3) "Insurance" means an insurance policy that meets
8 the requirements of Chapter 601, Transportation Code. (V.T.I.C.
9 Art. 21.81, Secs. 1(1), (2), (3).)

10 Source Law

11 Art. 21.81

12 Sec. 1. In this article:

13 (1) "Association" means the Texas
14 Automobile Insurance Plan Association established
15 under this article.

16 (2) "Authorized insurer" means any insurer
17 authorized by the Texas Department of Insurance to
18 write motor vehicle liability coverage under the
19 provisions of Chapter 5 of this code. Except as
20 provided by Section 13(f), Article 5.13-2 of this
21 code, the term does not include an insurer organized
22 under Chapter 17 of this code.

23 (3) "Insurance" means an insurance policy
24 that meets the requirements of the Texas Motor Vehicle
25 Safety-Responsibility Act (Article 6701h, Vernon's
26 Texas Civil Statutes).

27 Revisor's Note

28 (1) Section 1(2), V.T.I.C. Article 21.81,
29 refers to "motor vehicle liability coverage." The
30 revised law substitutes "automobile liability
31 coverage" for "motor vehicle liability coverage" in
32 this section and in similar phrases throughout this
33 chapter for consistency in this code. "Automobile
34 liability coverage" is the term more commonly used to
35 describe the type of insurance that provides coverage
36 for motor vehicles.

37 (2) Section 1(2), V.T.I.C. Article 21.81,
38 refers to an insurer authorized to write automobile
39 liability coverage under V.T.I.C. Chapter 5. That
40 chapter has been revised in various titles of this
41 code. The relevant provisions of Chapter 5 that

1 regulate the authority to write automobile liability
2 coverage are revised in Title 10 of this code. For
3 that reason, the revised law substitutes a reference
4 to "this title" for the reference to "Chapter 5."

5 (3) Section 1(3), V.T.I.C. Article 21.81,
6 refers to Article 6701h, Vernon's Texas Civil
7 Statutes. That statute was codified in pertinent part
8 in 1995 as Chapter 601, Transportation Code.
9 Throughout this chapter, the revised law is drafted
10 accordingly.

11 [Sections 2151.002-2151.050 reserved for expansion]

12 SUBCHAPTER B. TEXAS AUTOMOBILE INSURANCE PLAN ASSOCIATION

13 Revised Law

14 Sec. 2151.051. NATURE AND COMPOSITION OF ASSOCIATION. (a)
15 The Texas Automobile Insurance Plan Association is a nonprofit
16 corporate body composed of all authorized insurers.

17 (b) Each authorized insurer must be a member of the
18 association as a condition of the insurer's authority to write
19 automobile liability insurance in this state. (V.T.I.C.
20 Art. 21.81, Sec. 2(a) (part).)

21 Source Law

22 Sec. 2. (a) . . . The association is a
23 nonprofit corporate body composed of all authorized
24 insurers. Each authorized insurer shall be a member of
25 the association and shall remain a member of the
26 association so long as the association is in existence
27 as a condition of its authority to write motor vehicle
28 liability insurance in this state.

29 Revisor's Note

30 Section 2(a), V.T.I.C. Article 21.81, provides
31 that the association is established. The revised law
32 omits this provision as executed. The omitted law
33 reads:

34 Sec. 2. (a) The Texas Automobile
35 Insurance Plan Association is
36 established. . . .

37 Revised Law

38 Sec. 2151.052. AUTHORITY OF GOVERNING COMMITTEE. The

1 association is administered by a governing committee under a plan
2 of operation. (V.T.I.C. Art. 21.81, Secs. 2(b) (part), 3(a)
3 (part).)

4 Source Law

5 [Sec. 2]

6 (b) The association shall be administered by a
7 governing committee

8 Sec. 3. (a) The governing committee has the
9 responsibility for the administration of the
10 association through the plan of operation. . . .

11 Revised Law

12 Sec. 2151.053. MEMBERSHIP OF GOVERNING COMMITTEE. The
13 governing committee is composed of 15 members selected as follows:

14 (1) eight members who represent the interests of
15 insurers, elected by the association members according to a method
16 the members determine;

17 (2) five public members, nominated by the office of
18 public insurance counsel and selected by the commissioner; and

19 (3) two members who are general property and casualty
20 agents, as required by the plan of operation. (V.T.I.C.
21 Art. 21.81, Sec. 2(b) (part).)

22 Source Law

23 (b) [The association shall be administered by a
24 governing committee] composed of fifteen members
25 selected as follows:

26 (1) eight members who represent the
27 interests of insurers, elected by the members of the
28 association according to a method determined by such
29 members;

30 (2) five public members nominated by the
31 Office of Public Insurance Counsel and selected by the
32 commissioner; and

33 (3) two members who are licensed local
34 recording agents, as defined by the plan of operation.

35 Revisor's Note

36 (1) Section 2(b)(3), V.T.I.C. Article 21.81,
37 refers to "licensed" agents. The revised law omits
38 "licensed" as unnecessary in this context because
39 under Section 4001.101 of this code a person may not
40 act as an agent unless the person holds a license.

41 (2) Section 2(b)(3), V.T.I.C. Article 21.81,

1 refers to "local recording agents." The revised law
2 substitutes "general property and casualty agents" for
3 "local recording agents" because the term "local
4 recording agent" was eliminated by Chapter 703, Acts
5 of the 77th Legislature, Regular Session, 2001, and a
6 person who performs the duties formerly performed by a
7 local recording agent in the context of automobile
8 liability insurance is now regulated as a "general
9 property and casualty agent" under Chapter 4051 of
10 this code.

11 Revised Law

12 Sec. 2151.054. ELIGIBILITY TO SERVE AS INSURER
13 REPRESENTATIVE. To be eligible to serve on the governing committee
14 as a representative of insurers, an individual must be a full-time
15 employee of an authorized insurer. (V.T.I.C. Art. 21.81, Sec.
16 2(c).)

17 Source Law

18 (c) To be eligible to serve on the governing
19 committee as a representative of insurers, a person
20 must be a full-time employee of an authorized insurer.

21 Revised Law

22 Sec. 2151.055. INELIGIBILITY TO SERVE AS PUBLIC MEMBER. An
23 individual may not serve on the governing committee as a public
24 member if the individual, another individual related to that
25 individual within the second degree by consanguinity or affinity,
26 or another individual residing in the same household with that
27 individual:

28 (1) is required to be registered or licensed under
29 this code or another insurance law of this state;

30 (2) is employed by or acts as a consultant to a person
31 required to be registered or licensed or required to hold a
32 certificate of authority under this code or another insurance law
33 of this state;

34 (3) is the owner of, has a financial interest in, or
35 participates in the management of an organization required to be

1 registered or licensed or required to hold a certificate of
2 authority under this code or another insurance law of this state;

3 (4) is an officer, employer, or consultant of an
4 association in the field of insurance; or

5 (5) is required to register as a lobbyist under
6 Chapter 305, Government Code. (V.T.I.C. Art. 21.81, Sec. 2(d).)

7 Source Law

8 (d) A person may not serve on the governing
9 committee as a public member if that person, an
10 individual related to that person within the second
11 degree of consanguinity or affinity, or an individual
12 residing in the same household with that person is:

13 (1) required to be registered or licensed
14 under this code or another insurance law of this state;

15 (2) employed by or acts as a consultant to
16 a person required to be registered or licensed under
17 this code or another insurance law of this state;

18 (3) the owner of, has a financial interest
19 in, or participates in the management of an
20 organization required to be registered or licensed
21 under this code or another insurance law of this state;

22 (4) an officer, employer, or consultant of
23 an association in the field of insurance; or

24 (5) required to register as a lobbyist
25 under Chapter 305, Government Code.

26 Revisor's Note

27 Sections 2(d)(2) and (3), V.T.I.C. Article 21.81,
28 refer to a person and an organization required to be
29 "licensed" under this code or another insurance law of
30 this state. The revised law adds a reference to a
31 person and an organization "required to hold a
32 certificate of authority" because "certificate of
33 authority" is the term used throughout this code in
34 relation to an entity's authority to engage in
35 business.

36 Revised Law

37 Sec. 2151.056. IMMUNITY FROM LIABILITY. (a) The
38 association, a member of the governing committee, or an employee of
39 the association is not personally liable for:

40 (1) an act performed in good faith within the scope of
41 the person's authority as determined under this chapter or the plan
42 of operation; or

1 (2) damages occasioned by the person's official act or
2 omission except an act or omission that is corrupt or malicious.

3 (b) The association shall provide counsel to defend an
4 action brought against a member of the governing committee or an
5 employee because of the person's official act or omission
6 regardless of whether the person has terminated service with the
7 association when the action is instituted.

8 (c) This section is cumulative of and does not affect or
9 modify a common law or statutory privilege or immunity. (V.T.I.C.
10 Art. 21.81, Sec. 6.)

11 Source Law

12 Sec. 6. (a) The association, a member of the
13 governing committee, and any employee of the
14 association is not personally liable for any act
15 performed in good faith within the scope of the
16 person's authority as determined under this article or
17 the plan of operation or for damages occasioned by his
18 or her official acts or omissions except for an act or
19 omission that is corrupt or malicious. The
20 association shall provide counsel to defend any action
21 brought against a member of the governing committee or
22 an employee by reason of the person's official act or
23 omission whether or not at the time of the institution
24 of the action the defendant has terminated service
25 with the association.

26 (b) This section is cumulative with and does not
27 affect or modify any common law or statutory privilege
28 or immunity.

29 [Sections 2151.057-2151.100 reserved for expansion]

30 SUBCHAPTER C. POWERS AND DUTIES OF ASSOCIATION

31 Revised Law

32 Sec. 2151.101. POWERS OF NONPROFIT CORPORATION. (a) The
33 association has the powers granted to a nonprofit corporation under
34 the Business Organizations Code.

35 (b) Notwithstanding Subsection (a), on or before December
36 31, 2009, the association has the powers granted to a nonprofit
37 corporation under the Texas Non-Profit Corporation Act (Article
38 1396-1.01 et seq., Vernon's Texas Civil Statutes) or the Business
39 Organizations Code, as applicable.

40 (c) This subsection and Subsection (b) expire December 31,
41 2009. (V.T.I.C. Art. 21.81, Sec. 3(a) (part).)

1 Source Law

2 (a) The association has the powers
3 granted to nonprofit corporations under the Texas
4 Non-Profit Corporation Act (Article 1396-1.01 et seq.,
5 Vernon's Texas Civil Statutes).

6 Revisor's Note

7 Section 3(a), V.T.I.C. Article 21.81, refers to
8 the Texas Non-Profit Corporation Act. That act was
9 codified in various chapters of the Business
10 Organizations Code by Chapter 182, Acts of the 78th
11 Legislature, Regular Session, 2003. The Business
12 Organizations Code takes effect January 1, 2006, and
13 applies only to domestic business entities formed on
14 or after that date, to domestic business entities
15 formed before that date that elect to have that code
16 govern their operations, and to certain foreign
17 business entities. On January 1, 2010, the Texas
18 Non-Profit Corporation Act expires, and the Business
19 Organizations Code will apply to all business entities
20 without regard to date of formation or whether an
21 entity is a foreign or domestic business entity. The
22 revised law is drafted to reflect the applicability of
23 these statutes in accordance with their effective
24 dates or on election by a business entity.

25 Revised Law

26 Sec. 2151.102. ASSIGNMENT OF INSURANCE; ELIGIBILITY. (a)
27 The association shall provide for the assignment of insurance to an
28 authorized insurer for a person required by Chapter 601,
29 Transportation Code, to show proof of financial responsibility for
30 the future.

31 (b) An applicant is not eligible for insurance through the
32 association unless the applicant and the servicing agent certify as
33 part of the application to the association that the applicant has
34 been rejected for insurance by at least two insurers that are
35 authorized to engage in business in this state and that are writing

1 automobile insurance in this state. (V.T.I.C. Art. 21.81, Sec. 4.)

2 Source Law

3 Sec. 4. (a) The association shall provide a
4 means by which insurance may be assigned to an
5 authorized insurance company for a person required by
6 the Texas Motor Vehicle Safety-Responsibility Act
7 (Article 6701h, Vernon's Texas Civil Statutes) to show
8 proof of financial responsibility for the future.

9 (b) An applicant is not eligible for insurance
10 through the association unless the applicant and the
11 servicing agent certify as part of the application to
12 the association that the applicant has been rejected
13 for insurance by at least two insurers licensed to do
14 business in this state and actually writing automobile
15 insurance in this state, including insurers that are
16 not rate regulated.

17 Revisor's Note

18 (1) Section 4(a), V.T.I.C. Article 21.81,
19 refers to an "authorized insurance company." Section
20 1(2), V.T.I.C. Article 21.81, revised in this chapter
21 as Section 2151.001(2), defines "authorized insurer."
22 For consistency of terminology in this chapter, the
23 revised law substitutes "authorized insurer" for
24 "authorized insurance company."

25 (2) Section 4(b), V.T.I.C. Article 21.81,
26 refers to insurers that are "licensed" to do business
27 in this state. Throughout this chapter, the revised
28 law substitutes "authorized" for "licensed" in this
29 context for the reason stated in the revisor's note to
30 Section 2151.055.

31 (3) Section 4(b), V.T.I.C. Article 21.81,
32 refers to insurers authorized to write and actually
33 writing automobile insurance in this state, "including
34 insurers that are not rate regulated." The revised law
35 omits the quoted language as unnecessary and
36 misleading because, following enactment of S.B. No. 14
37 [Chapter 206], Acts of the 78th Legislature, Regular
38 Session, 2003, according to the Texas Department of
39 Insurance, all authorized insurers actually writing
40 automobile insurance in this state are rate regulated.

terminology throughout this chapter.

(2) Section 3(a), V.T.I.C. Article 21.81, refers to disciplinary action under V.T.I.C. Article 1.10. That article has been revised in various chapters of this code. The relevant provisions were contained in Section 7, Article 1.10, revised as Chapter 82 of this code. The revised law is drafted accordingly.

[Sections 2151.104-2151.150 reserved for expansion]

SUBCHAPTER D. PLAN OF OPERATION

Revised Law

Sec. 2151.151. CONTENTS OF PLAN OF OPERATION; AMENDMENTS.

(a) The plan of operation must:

(1) provide for the efficient, economical, fair, and nondiscriminatory administration of the association; and

(2) provide a means by which insurance may be provided in accordance with Section 2151.102(a).

(b) Subject to the commissioner's approval, the governing committee may amend the plan of operation. (V.T.I.C. Art. 21.81, Secs. 1(4), 3(b), (c).)

Source Law

[Sec. 1]

(4) "Plan of operation" means the plan for operating the association to provide a means by which insurance may be assigned to an eligible person who is required by law to show proof of financial responsibility for the future.

[Sec. 3]

(b) The plan of operation of the association must provide for the efficient, economical, fair, and nondiscriminatory administration of the association.

(c) Subject to the approval of the commissioner, the governing committee may make and amend the plan of operation.

Revisor's Note

(1) Section 1(4), V.T.I.C. Article 21.81, refers to a means of assigning insurance "to an eligible person who is required by law to show proof of financial responsibility for the future." The revised

1 law substitutes "in accordance with Section
2 2151.102(a)" for the quoted language because the
3 quoted language restates the substance of the
4 requirements of Section 4(a), V.T.I.C. Article 21.81,
5 revised in this chapter as Section 2151.102(a).

6 (2) Section 3(c), V.T.I.C. Article 21.81,
7 allows the governing committee of the Texas Automobile
8 Insurance Plan Association to "establish" the
9 association's plan of operation. The revised law omits
10 the reference to "establish" as executed.

11 Revised Law

12 Sec. 2151.152. CORRECTIVE ACTION TO PLAN OF OPERATION. If
13 the commissioner at any time believes that any part of the plan of
14 operation is inconsistent with the purposes of Chapter 601,
15 Transportation Code, the commissioner shall notify the governing
16 committee in writing so that the governing committee may take
17 corrective action. (V.T.I.C. Art. 21.81, Sec. 3(d).)

18 Source Law

19 (d) If the commissioner at any time believes
20 that any part of the plan of operation is not in
21 keeping with the purposes of the Texas Motor Vehicle
22 Safety-Responsibility Act (Article 6701h, Vernon's
23 Texas Civil Statutes), the commissioner shall notify
24 the governing committee in writing so that the
25 governing committee may take corrective action.

26 Revised Law

27 Sec. 2151.153. INCENTIVE PROGRAMS. (a) The plan of
28 operation must include incentive programs to encourage authorized
29 insurers to write insurance on a voluntary basis and to minimize the
30 use of the association as a means to obtain insurance.

31 (b) One incentive program must target underserved
32 geographic areas, which the commissioner by rule shall designate.
33 In designating underserved areas, the commissioner shall consider
34 with respect to an area:

35 (1) the availability of insurance;

36 (2) the number of uninsured drivers;

37 (3) the number of drivers insured through the

1 association; and

2 (4) any other relevant factor.

3 (c) The incentive programs are effective on the
4 commissioner's approval. (V.T.I.C. Art. 21.81, Sec. 3(e).)

5 Source Law

6 (e) Among other provisions, the plan of
7 operation must contain incentive programs to encourage
8 members to write insurance on a voluntary basis and to
9 minimize the use of the association as a means to
10 obtain insurance. The incentive programs are
11 effective on approval of the commissioner. One of
12 these programs shall target underserved geographic
13 areas which shall be determined and designated by the
14 commissioner by rule. In determining which areas will
15 be designated as underserved, the commissioner shall
16 consider the availability of insurance, the number of
17 uninsured drivers, the number of drivers insured
18 through the association, and any other relevant
19 factor.

20 Revisor's Note

21 Section 3(e), V.T.I.C. Article 21.81, authorizes
22 the commissioner of insurance to "determine and
23 designate" underserved areas. The revised law omits
24 the reference to "determine" because, in context,
25 "determine" is included within the meaning of
26 "designate."

27 Revised Law

28 Sec. 2151.154. ASSIGNMENT DISTRIBUTION PLAN. (a) The
29 plan of operation must include a voluntary, competitive limited
30 assignment distribution plan that allows an authorized insurer to
31 contract directly with a servicing insurer to accept assignments to
32 the servicing insurer by the association.

33 (b) A servicing insurer must be authorized to write
34 automobile insurance in this state and must:

35 (1) have written automobile liability insurance in
36 this state for at least five years; or

37 (2) be currently engaged as a servicing insurer for
38 assigned risk automobile business in at least one other state.

39 (c) After notice and hearing, the commissioner may prohibit
40 an insurer from acting as a servicing insurer.

1 (d) An authorized insurer and a servicing insurer shall
2 determine through negotiation the terms of a contract described by
3 this section, including the buy-out fee.

4 (e) The governing committee may:

5 (1) adopt reasonable rules for the conduct of business
6 under a contract described by this section; and

7 (2) establish reasonable standards of eligibility for
8 servicing insurers. (V.T.I.C. Art. 21.81, Sec. 3(f).)

9 Source Law

10 (f) The plan of operation must include a
11 voluntary, competitive limited assignment
12 distribution plan that allows members to contract
13 directly with a servicing carrier to accept
14 assignments to that carrier by the association. A
15 servicing carrier must be an insurance company
16 licensed to write automobile insurance in this state
17 and is qualified if it has written automobile
18 liability insurance in Texas for at least five years or
19 is currently engaged as a servicing carrier for
20 assigned risk automobile business in at least one
21 other state. After notice and hearing, the
22 commissioner may prohibit an insurer from acting as a
23 servicing carrier. The terms of the contract between
24 the servicing carrier and the insurer, including the
25 buy-out fee, shall be determined by negotiation
26 between the parties. The governing committee may
27 adopt reasonable rules for the conduct of business
28 under the contract and may establish reasonable
29 standards of eligibility for servicing carriers.

30 [Sections 2151.155-2151.200 reserved for expansion]

31 SUBCHAPTER E. RATES FOR INSURANCE; HEARING

32 Revised Law

33 Sec. 2151.201. RATE STANDARDS. Rates for insurance
34 provided under this chapter must be:

35 (1) just, reasonable, adequate, not excessive, not
36 confiscatory, and not unfairly discriminatory for the risks to
37 which the rates apply; and

38 (2) sufficient to carry all claims to maturity and
39 meet the expenses incurred in the writing and servicing of the
40 business. (V.T.I.C. Art. 21.81, Sec. 5(a) (part).)

41 Source Law

42 Sec. 5. (a) [The commissioner shall determine
43 and prescribe appropriate] rates to be charged for
44 insurance provided through the association that are
45 just, reasonable, adequate, not excessive, not

1 confiscatory, and not unfairly discriminatory for the
2 risks to which they apply. Rates shall be set in an
3 amount sufficient to carry all claims to maturity and
4 to meet the expenses incurred in the writing and
5 servicing of the business. . . .

6 Revised Law

7 Sec. 2151.202. RATE FILINGS. (a) The association shall
8 file annually with the department rates to be charged for insurance
9 provided through the association for approval by the commissioner.

10 (b) The association may not file rates under this section
11 more than once in any 12-month period. (V.T.I.C. Art. 21.81, Sec.
12 5(c) (part).)

13 Source Law

14 (c) The association shall file annually with the
15 department for approval by the commissioner rates to
16 be charged for insurance provided through the
17 association. The association may not make such a
18 filing more than once in any 12-month period. . . .

19 Revised Law

20 Sec. 2151.203. RECORDING AND REPORTING OF PREMIUM, LOSS,
21 AND EXPENSE EXPERIENCE. (a) The commissioner shall adopt
22 reasonable rules and statistical plans for the recording and
23 reporting of premium, loss, and expense experience and other
24 required data by each authorized insurer. The premium, loss, and
25 expense experience must be reported separately for business
26 assigned to the insurer.

27 (b) Each authorized insurer shall use the statistical plans
28 adopted under this section to record and report premium, loss, and
29 expense experience and other required data in accordance with the
30 rules adopted by the commissioner.

31 (c) In approving rates under this subchapter, the
32 commissioner shall consider the reports collected under the
33 statistical plan regarding aggregated premiums earned and losses
34 and expenses incurred in the writing of automobile insurance
35 through the association. (V.T.I.C. Art. 21.81, Sec. 5(a) (part),
36 (b).)

37 Source Law

38 Sec. 5. (a) The commissioner shall determine
39 and prescribe appropriate [rates to be charged for

1 insurance provided through the association] In
2 making a determination, the commissioner shall
3 consider the reports of aggregated premiums earned and
4 losses and expenses incurred in the writing of motor
5 vehicle insurance through the plan collected under the
6 statistical plan provided for by Subsection (b) of
7 this section.

8 (b) The commissioner shall promulgate
9 reasonable rules and statistical plans to be used by
10 each insurer in the recording and reporting of its
11 premium, loss, and expense experience which must be
12 reported separately for business assigned to it and
13 other data required by the commissioner.

14 Revisor's Note

15 Section 5(a), V.T.I.C. Article 21.81, requires
16 the commissioner of insurance to unilaterally
17 "determine and prescribe" rates for insurance provided
18 under the article. For accuracy, the revised law
19 substitutes "approve" for "determine and prescribe"
20 because the requirement to determine and prescribe
21 rates was impliedly repealed by the enactment in 2001
22 of Sections 5(c)-(i), V.T.I.C. Article 21.81, by
23 Section 4, Chapter 1071, Acts of the 77th Legislature,
24 Regular Session. Sections 5(c)-(i) provide a
25 procedure by which the Texas Automobile Insurance Plan
26 Association files rates with the commissioner and the
27 commissioner approves, disapproves, or modifies the
28 filed rates.

29 Revised Law

30 Sec. 2151.204. NOTICE OF FILING. (a) The department
31 shall file with the secretary of state for publication in the Texas
32 Register notice that a filing has been made under Section 2151.202
33 not later than the seventh day after the date the filing is received
34 by the department.

35 (b) The notice must include information relating to:

36 (1) the availability of the filing for public
37 inspection at the department during regular business hours;

38 (2) the procedures for obtaining copies of the filing;

39 (3) procedures for making written comments related to
40 the filing; and

1 (4) the time, place, and date of the hearing scheduled
2 under Section 2151.206. (V.T.I.C. Art. 21.81, Sec. 5(f).)

3 Source Law

4 (f) The department shall file with the Texas
5 Register notice that a filing has been made under
6 Subsection (c) of this section not later than the
7 seventh day after the date the filing is received by
8 the department. The notice must include information
9 relating to:

10 (1) the availability of the filing for
11 public inspection at the department during regular
12 business hours and the procedures for obtaining copies
13 of the filing;

14 (2) procedures for making written comments
15 related to the filing; and

16 (3) the time, place, and date of the
17 hearing scheduled under Subsection (e) of this
18 section.

19 Revisor's Note

20 Section 5(f), V.T.I.C. Article 21.81, requires
21 the Texas Department of Insurance to file a notice
22 "with the Texas Register." Under Section 2002.016,
23 Government Code, material that must be filed for
24 publication in the Texas Register is filed with the
25 secretary of state. The revised law is drafted
26 accordingly.

27 Revised Law

28 Sec. 2151.205. OPPORTUNITY TO REVIEW FILING. Before
29 approving, disapproving, or modifying a filing made under Section
30 2151.202, the commissioner must provide to all interested persons a
31 reasonable opportunity to:

32 (1) review the filing;

33 (2) obtain a copy of the filing on payment of any
34 legally required copying cost; and

35 (3) submit to the commissioner written comments,
36 analyses, or information related to the filing. (V.T.I.C.
37 Art. 21.81, Sec. 5(d).)

38 Source Law

39 (d) Before approving, disapproving, or
40 modifying a filing made under Subsection (c) of this
41 section, the commissioner shall provide all interested
42 persons a reasonable opportunity to:

43 (1) review the filing;

1 (2) obtain copies of the filing on payment
2 of any legally required copying cost; and
3 (3) submit to the commissioner written
4 comments, analyses, or information related to the
5 filing.

6 Revised Law

7 Sec. 2151.206. HEARING ON FILING. (a) Not later than the
8 45th day after the date the department receives a filing required by
9 Section 2151.202, the commissioner shall schedule a hearing at
10 which interested persons may present written or oral comments
11 relating to the filing.

12 (b) The association, the public insurance counsel, and any
13 other interested person or entity that submits proposed changes or
14 actuarial analyses may ask questions of any person testifying at
15 the hearing.

16 (c) A hearing held under this section is not a contested
17 case hearing under Chapter 2001, Government Code. (V.T.I.C. Art.
18 21.81, Sec. 5(e).)

19 Source Law

20 (e) Not later than the 45th day after the date on
21 which the department receives the filing required
22 under Subsection (c) of this section, the commissioner
23 shall schedule a hearing at which interested persons
24 may present written or oral comments relating to the
25 filing. A hearing under this subsection is not a
26 contested case hearing under Chapter 2001, Government
27 Code. The association, the public insurance counsel,
28 and any other interested person or entity that has
29 submitted proposed changes or actuarial analyses may
30 ask questions of any person testifying at the hearing.

31 Revised Law

32 Sec. 2151.207. ACTION OF COMMISSIONER ON FILING. (a) After
33 the conclusion of the hearing under Section 2151.206, the
34 commissioner shall approve, disapprove, or modify the filing in
35 writing.

36 (b) If the commissioner disapproves a filing, the
37 commissioner shall state in writing the reasons for the disapproval
38 and the criteria to be met by the association to obtain approval.
39 (V.T.I.C. Art. 21.81, Sec. 5(g) (part).)

40 Source Law

41 (g) After the conclusion of the hearing, the
42 commissioner shall approve, disapprove, or modify the

1 filing in writing. If the commissioner disapproves a
2 filing, the commissioner shall state in writing the
3 reasons for the disapproval and the criteria to be met
4 by the association to obtain approval. . . .

5 Revised Law

6 Sec. 2151.208. AMENDED FILING. The association may file
7 with the commissioner an amended filing to comply with the
8 commissioner's comments not later than the 10th day after the date
9 the association receives the commissioner's written disapproval.
10 (V.T.I.C. Art. 21.81, Sec. 5(g) (part).)

11 Source Law

12 (g) . . . The association may file with the
13 commissioner, not later than the 10th day after the
14 date on which the association receives the
15 commissioner's written disapproval, an amended filing
16 to comply with the commissioner's comments.

17 Revised Law

18 Sec. 2151.209. OPPORTUNITY TO REVIEW AMENDED FILING.
19 Before approving or disapproving an amended filing, the
20 commissioner must provide to all interested persons a reasonable
21 opportunity, in the same manner an opportunity is provided under
22 Section 2151.205, to:

- 23 (1) review the amended filing;
24 (2) obtain a copy of the amended filing on payment of
25 any legally required copying cost; and
26 (3) submit to the commissioner written comments or
27 information related to the amended filing. (V.T.I.C. Art. 21.81,
28 Sec. 5(h) (part).)

29 Source Law

30 (h) Before approving or disapproving an amended
31 filing, the commissioner shall provide all interested
32 persons a reasonable opportunity to review the amended
33 filing, obtain copies of the amended filing on payment
34 of any legally required copying cost, and submit to the
35 commissioner written comments or information related
36 to the amended filing in the manner provided by
37 Subsection (d) of this section, and

38 Revised Law

39 Sec. 2151.210. HEARING ON AMENDED FILING. (a) The
40 commissioner may hold a hearing in the manner provided by Section
41 2151.206 not later than the 20th day after the date the department

1 receives an amended filing.

2 (b) Not later than the 10th day after the date the hearing on
3 the amended filing is concluded, the commissioner shall approve or
4 disapprove the amended filing.

5 (c) Not later than the 30th day after the date the amended
6 filing is received by the department, the commissioner shall
7 disapprove the amended filing or the filing is considered approved.

8 (d) The requirements provided under Sections 2151.204 and
9 2151.207 apply to a hearing conducted under this section.
10 (V.T.I.C. Art. 21.81, Sec. 5(h) (part).)

11 Source Law

12 (h) . . . the commissioner . . . may hold a
13 hearing not later than the 20th day after the date on
14 which the department receives the amended filing in
15 the manner provided by Subsection (e) of this section.
16 Not later than the 10th day after the date on which the
17 hearing on the amended filing is concluded, the
18 commissioner shall approve or disapprove the amended
19 filing. Not later than the 30th day after the date on
20 which the amended filing is received by the
21 department, the commissioner shall disapprove the
22 amended filing or it is considered approved. The
23 requirements adopted under Subsections (f) and (g) of
24 this section apply to a hearing conducted under this
25 subsection.

26 Revised Law

27 Sec. 2151.211. APPEAL. (a) A person aggrieved by a
28 decision of the commissioner under this subchapter may appeal the
29 decision not later than the 30th day after the date of the decision.

30 (b) An appeal of a commissioner's decision under this
31 subchapter must be made in accordance with Subchapter D, Chapter
32 36. (V.T.I.C. Art. 21.81, Sec. 5(i).)

33 Source Law

34 (i) A person aggrieved by a decision of the
35 commissioner under this section may, not later than
36 the 30th day after the date of the commissioner's
37 decision, appeal the decision. An appeal of a
38 commissioner's decision under this section must be
39 made in accordance with Subchapter D, Chapter 36, of
40 this code.

41 Revised Law

42 Sec. 2151.212. HEARINGS BY DEPARTMENT. Subchapter B,
43 Chapter 40, does not apply to this subchapter. (V.T.I.C. Art.

21.81, Sec. 5(c) (part).)

Source Law

(c) . . . Subchapter B, Chapter 40, of this code does not apply to:
 (1) a filing made under this subsection;
 (2) Subsections (d)-(h) of this section;
or
 (3) a department action with respect to such a filing.

Revisor's Note

Section 5(c), V.T.I.C. Article 21.81, provides that Subchapter B, Chapter 40, of this code does not apply to specified provisions of Section 5, V.T.I.C. Article 21.81, and certain actions by the Texas Department of Insurance under those provisions. Subchapter B, Chapter 40, provides for certain hearings to be conducted by the State Office of Administrative Hearings. The revised law substitutes a reference to "this subchapter" for the referenced provisions because those provisions are revised in this subchapter, and this subchapter does not contain any other provisions to which Subchapter B, Chapter 40, could apply.

CHAPTER 2152. GROUP INSURANCE IN UNDERSERVED AREAS

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CHAPTER 2152. GROUP INSURANCE IN UNDERSERVED AREAS

Revised Law

Sec. 2152.001. DEFINITION. In this chapter, "residential property insurance" means insurance against loss to real or

1 tangible personal property at a fixed location that is provided
2 through a homeowners policy, residential fire and allied lines
3 policy, or farm and ranch owners policy. (V.T.I.C. Art. 21.79, Sec.
4 1(a) (part).)

5 Source Law

6 (a) . . . For purposes of this article,
7 residential property insurance means insurance
8 against loss to real or tangible personal property at a
9 fixed location provided in a homeowners policy,
10 residential fire and allied lines policy, or farm and
11 ranch owners policy.

12 Revised Law

13 Sec. 2152.002. DESIGNATION OF UNDERSERVED AREAS. (a) The
14 commissioner by rule may designate an area as an underserved area
15 for personal automobile insurance or residential property
16 insurance.

17 (b) In determining which areas to designate as underserved,
18 the commissioner shall consider:

19 (1) whether the insurance described by Subsection (a)
20 is not reasonably available to a substantial number of insurable
21 risks and the availability of insurance in general; and

22 (2) any other relevant factor as determined by the
23 commissioner. (V.T.I.C. Art. 21.79, Sec. 1(a) (part).)

24 Source Law

25 Art. 21.79

26 Sec. 1. (a) By rule the commissioner may
27 determine and designate areas as underserved areas for
28 private passenger auto insurance or residential
29 property insurance. In determining which areas will
30 be designated as underserved, the commissioner shall
31 consider whether such insurance is not reasonably
32 available to a substantial number of insurable risks
33 and the availability of insurance and any other
34 relevant factors as determined by the
35 commissioner. . . .

36 Revisor's Note

37 (1) Section 1(a), V.T.I.C. Article 21.79,
38 authorizes the commissioner of insurance to "determine
39 and designate" underserved areas. The revised law
40 omits the reference to "determine" because, in
41 context, "determine" is included within the meaning of

1 "designate."

2 (2) Section 1(a), V.T.I.C. Article 21.79,
3 refers to "private passenger auto insurance." The
4 revised law substitutes "personal automobile
5 insurance" for "private passenger auto insurance" in
6 this section and throughout this chapter for
7 consistency in this code. "Personal automobile
8 insurance" is the term more commonly used to describe
9 the type of insurance that provides coverage for
10 private passenger automobiles.

11 Revised Law

12 Sec. 2152.003. AUTHORIZATION FOR ISSUANCE OF GROUP
13 INSURANCE IN UNDERSERVED AREA. An insurer authorized to write
14 property or casualty insurance in this state, including a Lloyd's
15 plan and a reciprocal or interinsurance exchange, that writes
16 personal automobile insurance or residential property insurance in
17 this state may write the personal automobile insurance or
18 residential property insurance on a group basis in an underserved
19 area designated by the commissioner. (V.T.I.C. Art. 21.79, Sec.
20 2.)

21 Source Law

22 Sec. 2. All insurers authorized to write
23 property or casualty insurance in this state and
24 writing private passenger auto insurance or
25 residential property insurance in this state,
26 including insurers licensed under Chapters 18 and 19
27 of this code, are authorized to write such insurance on
28 a group basis in underserved areas as designated by the
29 commissioner.

30 Revisor's Note

31 Section 2, V.T.I.C. Article 21.79, refers to
32 "insurers licensed under Chapters 18 and 19 of this
33 code." Chapters 18 and 19 were revised in 2001 as
34 Chapters 941 and 942 of this code, respectively.
35 Chapter 941 of this code regulates the authority of a
36 Lloyd's plan to engage in business in this state, and
37 Chapter 942 of this code regulates the authority of a

1 reciprocal or interinsurance exchange to engage in
2 business in this state. For the convenience of the
3 reader, the revised law substitutes a reference to "a
4 Lloyd's plan and a reciprocal or interinsurance
5 exchange" for the reference to "insurers licensed
6 under Chapters 18 and 19 of this code."

7 Revised Law

8 Sec. 2152.004. EXCLUSION OF CERTAIN COVERAGE. Group
9 insurance provided under this chapter may not include windstorm and
10 hail insurance coverage for a risk eligible for that coverage under
11 Chapter 2210. (V.T.I.C. Art. 21.79, Sec. 1(b).)

12 Source Law

13 (b) Group insurance provided under this article
14 may not include windstorm and hail insurance coverage
15 for a risk eligible for that coverage under Article
16 21.49 of this code.

17 Revised Law

18 Sec. 2152.005. FORMATION OF GROUP. A group may be formed
19 solely to purchase insurance subject to this chapter. (V.T.I.C.
20 Art. 21.79, Sec. 3.)

21 Source Law

22 Sec. 3. A group may be formed solely for the
23 purpose of purchasing insurance subject to this
24 article.

25 Revised Law

26 Sec. 2152.006. RATES. Rates for coverage provided under
27 this chapter are subject to the applicable statutes relating to the
28 insurers providing the coverage. (V.T.I.C. Art. 21.79, Sec. 5.)

29 Source Law

30 Sec. 5. The rates for coverage shall be subject
31 to the applicable statutory provisions relating to the
32 respective insurers.

33 Revised Law

34 Sec. 2152.007. POLICY FORMS AND CERTIFICATES. The
35 commissioner shall adopt policy forms and certificates for use in
36 underserved areas designated by the commissioner under this
37 chapter. (V.T.I.C. Art. 21.79, Sec. 4.)

Source Law

Sec. 4. All policy forms and certificates for use in underserved areas as designated by the commissioner shall be adopted by the commissioner.

Revised Law

Sec. 2152.008. RULES. In addition to other rules adopted under this chapter, the commissioner may adopt any rules that are appropriate and necessary to implement this chapter. (V.T.I.C. Art. 21.79, Sec. 6.)

Source Law

Sec. 6. The commissioner may adopt any other rules that are appropriate and necessary to implement this article.

CHAPTER 2153. GROUP MARKETING OF AUTOMOBILE INSURANCE

FOR PERSONS OVER 55 YEARS OF AGE

SUBCHAPTER A. GENERAL PROVISIONS

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[Sections 2153.004-2153.050 reserved for expansion]

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[Sections 2153.060-2153.100 reserved for expansion]

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2 CHAPTER 2153. GROUP MARKETING OF AUTOMOBILE INSURANCE

3 FOR PERSONS OVER 55 YEARS OF AGE

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Revised Law

6 Sec. 2153.001. DEFINITIONS. In this chapter:

7 (1) "Group automobile insurance" means automobile
8 insurance that:

9 (A) covers individuals who are over 55 years of
10 age; and

11 (B) is offered under a group marketing plan.

12 (2) "Group marketing" means the marketing of group
13 automobile insurance to an eligible group under Section 2153.052.
14 (V.T.I.C. Art. 21.77, Secs. 2(1) (part), (2) (part).)

15 Source Law

16 Sec. 2. As used in this article:

17 (1) "Group motor vehicle insurance" means
18 all motor vehicle insurance covering persons over 55
19 years of age that is offered . . . on a group marketing
20 plan to an eligible group as defined in this article.

21 (2) "Group marketing" means the marketing
22 of group motor vehicle insurance . . . to an eligible
23 group

24 Revisor's Note

25 Section 2(1), V.T.I.C. Article 21.77, defines
26 "group motor vehicle insurance" in part as insurance
27 "offered . . . on a group marketing plan to an
28 eligible group as defined in this article." The
29 revised law substitutes for the quoted language
30 "offered under a group marketing plan" to avoid
31 duplicating language included in Section 2(2),
32 V.T.I.C. Article 21.77, revised in relevant part in
33 this chapter in Section 2153.054. The revised law also
34 substitutes "automobile insurance" for "motor vehicle
35 insurance" in this section and throughout this chapter
36 for consistency of terminology in this code.

1 Revised Law

2 Sec. 2153.002. APPLICABILITY OF CERTAIN PROVISIONS.
3 Sections 4001.051 and 4001.053 do not apply to a group
4 participating in a group marketing plan under this chapter.
5 (V.T.I.C. Art. 21.77, Sec. 10.)

6 Source Law

7 Sec. 10. The provisions of Article 21.02 of this
8 code may not be construed to apply to groups
9 participating in group plans approved under this
10 article.

11 Revisor's Note

12 (1) Section 10, V.T.I.C. Article 21.77, refers
13 to the provisions of "Article 21.02 of this code."
14 Article 21.02 is revised in various sections of
15 Chapter 4001 of this code. The relevant provisions are
16 revised in Sections 4001.051 and 4001.053 of this
17 code, and the revised law is drafted accordingly.

18 (2) Section 10, V.T.I.C. Article 21.77, refers
19 to "group plans approved under this article." The
20 revised law omits "approved" because the article does
21 not grant any approval authority.

22 Revised Law

23 Sec. 2153.003. RULES. The commissioner may adopt any rules
24 necessary to carry out the provisions of this chapter. (V.T.I.C.
25 Art. 21.77, Sec. 9.)

26 Source Law

27 Sec. 9. The board may make any rules necessary
28 to carry out the provisions of this article.

29 Revisor's Note

30 Section 9, V.T.I.C. Article 21.77, authorizes the
31 "board," meaning the State Board of Insurance, to
32 "make" any rules that are necessary to carry out
33 V.T.I.C. Article 21.77, revised as this chapter.
34 Chapter 685, Acts of the 73rd Legislature, Regular
35 Session, 1993, abolished the board and transferred its
36 functions to the commissioner of insurance and the

1 Texas Department of Insurance. Throughout this
2 chapter, references to the board have been changed
3 appropriately. In addition, for consistency with
4 terminology used in this code and the administrative
5 procedure law, Chapter 2001, Government Code, the
6 revised law substitutes "adopt" for "make."

7 Revisor's Note
8 (End of Subchapter)

9 Section 1, V.T.I.C. Article 21.77, contains a
10 statement of the legislature's purpose in enacting
11 that article. The revised law omits the statement of
12 legislative purpose because that provision is
13 nonsubstantive and because the legislature's purpose
14 in enacting that article is clear from the substantive
15 provisions of the article, which are revised as this
16 chapter. The omitted law reads:

17 Sec. 1. The purpose of this article
18 is to authorize the writing of motor vehicle
19 insurance covering persons over 55 years of
20 age in this state on a group marketing basis
21 subject to the conditions stated in this
22 article and to set forth the terms and
23 conditions under which insurance covering
24 persons over 55 years of age on a group
25 marketing basis may be written.

26 [Sections 2153.004-2153.050 reserved for expansion]

27 SUBCHAPTER B. CONDITIONS FOR ISSUANCE
28 OF GROUP AUTOMOBILE INSURANCE

29 Revised Law

30 Sec. 2153.051. AUTHORIZATION FOR ISSUANCE OF GROUP
31 AUTOMOBILE INSURANCE. An insurer may issue group automobile
32 insurance in this state if the conditions of Sections 2153.054(b),
33 2153.055-2153.059, and 2153.103 are met. (V.T.I.C. Art. 21.77,
34 Sec. 5(a).)

35 Source Law

36 Sec. 5. (a) Group motor vehicle insurance may
37 be issued in this state provided the conditions in this
38 section are met.

1 Revised Law

2 Sec. 2153.052. ELIGIBILITY OF GROUP. (a) To be eligible
3 for group marketing, a group must:

4 (1) have existed for at least six months before the
5 date the group automobile insurance is purchased; and

6 (2) be organized for a purpose other than to become an
7 insurance group under this chapter.

8 (b) The group may include any group that is actuarially
9 credible for underwriting purposes. (V.T.I.C. Art. 21.77, Sec. 3.)

10 Source Law

11 Sec. 3. Any group, to be eligible for group
12 marketing, must have been in existence for at least six
13 months before the purchase of the insurance and must be
14 a group organized for a purpose other than to become an
15 insurance group under this Act, and the group may
16 include any group that will be actuarially credible
17 for underwriting purposes.

18 Revised Law

19 Sec. 2153.053. ELIGIBILITY OF GROUP MEMBER. A member of a
20 group described by Section 2153.052 is eligible to participate in a
21 group marketing plan if the member is:

22 (1) in good standing with the group;

23 (2) over 55 years of age; and

24 (3) authorized to operate a motor vehicle in this
25 state. (V.T.I.C. Art. 21.77, Sec. 4.)

26 Source Law

27 Sec. 4. Eligible members of a group shall include
28 all members in good standing in the group who are over
29 55 years of age and lawful drivers.

30 Revisor's Note

31 Section 4, V.T.I.C. Article 21.77, refers to
32 certain group members who are "lawful drivers." The
33 revised law substitutes "authorized to operate a motor
34 vehicle in this state" for "lawful driver" because to
35 be a lawful driver, a person must be authorized to
36 operate a motor vehicle in this state.

37 Revised Law

38 Sec. 2153.054. GUARANTEED ISSUE. (a) An insurer shall

1 issue group automobile insurance:

2 (1) on a guaranteed basis under a single insurance
3 program; and

4 (2) without individual underwriting selection or
5 individual proof of insurability.

6 (b) An insurer that issues group automobile insurance and
7 the insured group shall accept for participation in the group
8 marketing plan any member of the group who is eligible under Section
9 2153.053 and who wants to participate. (V.T.I.C. Art. 21.77, Secs.
10 2(2) (part), 5(b).)

11 Source Law

12 [Sec. 2]

13 (2) ["Group marketing" means the
14 marketing of group motor vehicle insurance] . . . on a
15 guaranteed basis under a single insurance program
16 without individual underwriting selection or
17 individual proof of insurability.

18 [Sec. 5]

19 (b) The insurer and the group insured must
20 accept all members who are eligible and wish to
21 participate in the plan.

22 Revised Law

23 Sec. 2153.055. INSURER QUALIFICATIONS. To qualify to
24 write group automobile insurance, an insurer:

25 (1) must be authorized to engage in the business of
26 automobile insurance in this state;

27 (2) must also be engaged in the business of writing
28 automobile insurance for independent individual risks; and

29 (3) may not be organized solely to provide group
30 automobile insurance. (V.T.I.C. Art. 21.77, Secs. 2(1) (part), (2)
31 (part), 5(c).)

32 Source Law

33 [Sec. 2]

34 (1) ["Group motor vehicle insurance" means
35 all motor vehicle insurance . . . offered] by a
36 licensed insurer in this state

37 (2) ["Group marketing" means the marketing
38 of group motor vehicle insurance] by a licensed
39 insurer otherwise engaged in insuring independent
40 individual risks

41 [Sec. 5]

42 (c) To qualify to write the group insurance

1 defined in this article, an insurer must also be
2 engaged in the business of writing the type of coverage
3 offered for insureds other than group and may not be
4 organized solely for the purpose of furnishing
5 coverage to such groups.

6 Revisor's Note

7 (1) Sections 2(1) and (2), V.T.I.C. Article
8 21.77, refer to a "licensed insurer." The revised law
9 substitutes "authorized" for "licensed" because
10 "certificate of authority" is the term used throughout
11 this code in relation to an entity's authority to
12 engage in business.

13 (2) Section 5(c), V.T.I.C. Article 21.77,
14 provides that an insurer that writes group insurance
15 must also be engaged in the business of writing "the
16 type of coverage offered." The revised law
17 substitutes "automobile insurance" for the quoted
18 language because automobile insurance is the only kind
19 of insurance the article addresses. Section 5(c),
20 V.T.I.C. Article 21.77, also refers to "insureds other
21 than group." The revised law substitutes "independent
22 individual risks" for the quoted language to be
23 consistent with similar terminology used in the
24 definition of "group marketing" in Section 2(2),
25 V.T.I.C. Article 21.77, revised in pertinent part as
26 this section and Section 2153.054 of this chapter.

27 Revised Law

28 Sec. 2153.056. VEHICLES COVERED. A group marketing plan
29 must provide that a motor vehicle is eligible for group automobile
30 insurance coverage only if the vehicle is owned by a group member or
31 the member's spouse jointly or severally. (V.T.I.C. Art. 21.77,
32 Sec. 5(g).)

33 Source Law

34 (g) The plan shall provide that only those motor
35 vehicles owned by members of the group or their spouses
36 jointly or severally shall be eligible for coverage.

1 Revised Law

2 Sec. 2153.057. INDIVIDUAL POLICIES. An insurer shall
3 issue an individual policy to each participating group member.
4 (V.T.I.C. Art. 21.77, Secs. 5(d) (part), (e) (part).)

5 Source Law

6 (d) Each member of the group shall be issued a
7 policy [on forms prescribed for issue in this state by
8 the State Board of Insurance].

9 (e) Insurance must be provided by individual
10 policies to each member of the group

11 Revised Law

12 Sec. 2153.058. GROUP PAYMENT OF PREMIUMS. An insurer shall
13 provide group automobile insurance under an agreement under which
14 the group periodically pays the premiums on the policies to the
15 insurer. (V.T.I.C. Art. 21.77, Sec. 5(e) (part).)

16 Source Law

17 (e) Insurance must be provided . . . under an
18 agreement whereby the premiums on the policies will be
19 paid to the insurer periodically by the group.

20 Revised Law

21 Sec. 2153.059. LIMITATIONS ON CANCELING INSURANCE. (a) An
22 insurer may not cancel the insurance of a group member unless:

23 (1) the member fails to pay the premiums; or

24 (2) the insurance for the entire group is canceled.

25 (b) An insurer that cancels insurance under Subsection (a)
26 shall provide to each group member whose insurance is canceled the
27 same notice of cancellation the insurer provides for cancellation
28 of individual automobile insurance policies. (V.T.I.C.
29 Art. 21.77, Sec. 5(f).)

30 Source Law

31 (f) An insurer may not cancel the insurance of
32 an individual member of the group except for the
33 nonpayment of premiums by the member or unless the
34 insurance for the entire group is cancelled, and in
35 such cases, notice of cancellation as provided in like
36 nongroup policies shall be given to each member.

37 Revisor's Note

38 Section 5(f), V.T.I.C. Article 21.77, states that
39 when a group member's insurance is canceled notice of

1 cancellation shall be provided as in "like nongroup
2 policies." The revised law substitutes "individual
3 automobile insurance policies" for the quoted language
4 because referring to "individual" insurance rather
5 than "nongroup" is consistent with terminology used
6 elsewhere in this chapter.

7 [Sections 2153.060-2153.100 reserved for expansion]

8 SUBCHAPTER C. RECORDS, RATES, AND FORMS

9 Revised Law

10 Sec. 2153.101. MAINTENANCE OF RECORDS. An insurer that
11 writes insurance under a group marketing plan shall maintain
12 separate experience data on the group marketing plan business,
13 including complete records of premium income, losses, and expenses,
14 so that the experience may be fairly ascertained. (V.T.I.C.
15 Art. 21.77, Sec. 6.)

16 Source Law

17 Sec. 6. Every insurer writing insurance under a
18 group marketing plan shall keep and maintain separate
19 experience data on this type of business, including
20 complete records of premium income, losses, and
21 expenses so that the experience may be fairly
22 ascertained.

23 Revisor's Note

24 Section 6, V.T.I.C. Article 21.77, states that an
25 insurer shall "keep and maintain" certain experience
26 data. The revised law omits "keep" because "keep" is
27 included in the meaning of "maintain."

28 Revised Law

29 Sec. 2153.102. RATES. Rates for group automobile
30 insurance are determined in the manner provided by Chapter 2251 and
31 Article 5.13-2, to the extent that those laws apply. (V.T.I.C.
32 Art. 21.77, Sec. 7.)

33 Source Law

34 Sec. 7. Rates for the type of business
35 authorized under this article shall be determined,
36 fixed, prescribed, and promulgated in the manner
37 provided in Article 5.01, Insurance Code, as amended,
38 so far as it is applicable.

Revisor's Note

Section 7, V.T.I.C. Article 21.77, states that insurance rates under the article shall be "determined, fixed, prescribed, and promulgated" in the manner provided by V.T.I.C. Article 5.01, "as amended." The revised law substitutes a reference to Chapter 2251 and V.T.I.C. Article 5.13-2 for the reference to Article 5.01 because Article 5.01(f) provides that, on and after December 1, 2004, rates for "personal automobile insurance" are determined as provided by V.T.I.C. Article 5.13-2. The provisions of that article relating to rates are revised in part in this code as Chapter 2251. The kind of insurance offered under this chapter is a kind of personal automobile insurance. Although Chapter 2251 includes provisions derived from V.T.I.C. Article 5.13-2C, the revised law appropriately refers to the chapter in its entirety because the provisions that are not derived from Article 5.13-2 are inapplicable by their own terms in the context of the kind of insurance offered under this chapter.

In addition, the revised law omits the reference to "fixed, prescribed, and promulgated" because those terms do not accurately describe the procedures for determining rates under Article 5.13-2. The revised law also omits the reference to "as amended" because Section 311.027, Government Code (Code Construction Act), applicable to the revised law, provides that unless expressly provided otherwise, a reference to a statute applies to all reenactments, revisions, or amendments of the statute.

Revised Law

Sec. 2153.103. POLICY FORMS. An insurer that writes group automobile insurance shall use policy forms:

1 (1) prescribed by the commissioner and authorized for
2 use by Section 2301.052(b); or

3 (2) filed and in effect as provided by Section
4 2301.052(a). (V.T.I.C. Art. 21.77, Secs. 5(d) (part), 8.)

5 Source Law

6 [Sec. 5]

7 (d) [Each member of the group shall be issued a
8 policy] on forms prescribed for issue in this state by
9 the State Board of Insurance.

10 Sec. 8. All policy forms for insurance written
11 under this article shall be prescribed by the
12 commissioner as provided in Article 5.06 of this code
13 or filed and in effect as provided in Article 5.145 of
14 this code.

15 Revisor's Note

16 Section 5(d), V.T.I.C. Article 21.77, refers to
17 "forms prescribed for issue . . . by the State Board
18 of Insurance," meaning the commissioner of insurance,
19 and Section 8 of that article refers to forms
20 "prescribed by the commissioner as provided in Article
21 5.06 of this code or filed and in effect as provided in
22 Article 5.145 of this code." Under V.T.I.C. Article
23 5.06, policy forms for automobile insurance were
24 adopted or approved by the commissioner. The 78th
25 Legislature enacted Chapter 206, Acts of the 78th
26 Legislature, Regular Session, 2003, which took effect
27 June 11, 2003. Section 21.07 of that act amended
28 V.T.I.C. Article 5.06 to provide that policy forms for
29 automobile insurance are now regulated under V.T.I.C.
30 Article 5.13-2. However, under Section 2(b), V.T.I.C.
31 Article 5.145, enacted by Section 2.01 of Chapter 206,
32 an insurer may continue to use policy forms previously
33 promulgated, approved, or adopted under Article 5.06.
34 For clarity and to fully reflect the changes made by
35 Chapter 206, the revised law substitutes "prescribed
36 by the commissioner and authorized for use by Section
37 2301.052(b)," the revision of Section 2(b), Article

5.145, for the quoted phrases.

CHAPTER 2154. VOLUNTEER FIRE DEPARTMENT MOTOR VEHICLE
SELF-INSURANCE PROGRAM

Sec. 2154.001. DEFINITIONS 1140

Sec. 2154.002. MOTOR VEHICLE SELF-INSURANCE PROGRAM 1141

Sec. 2154.003. SELF-INSURANCE POOL; COVERAGE 1142

Sec. 2154.004. PARTICIPATION IN SELF-INSURANCE POOL 1144

Sec. 2154.005. VOLUNTEER FIRE DEPARTMENT
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Sec. 2154.006. LIMITATION ON STATE'S LIABILITY 1145

Sec. 2154.007. SELF-INSURANCE FEE 1145

Sec. 2154.008. LEGAL REPRESENTATION 1146

CHAPTER 2154. VOLUNTEER FIRE DEPARTMENT MOTOR VEHICLE
SELF-INSURANCE PROGRAM

Revised Law

Sec. 2154.001. DEFINITIONS. In this chapter:

(1) "Fund" means the volunteer fire department self-insurance fund established under Section 2154.005.

(2) "Program" means the volunteer fire department motor vehicle self-insurance program administered under this chapter.

(3) "Service" means the Texas Forest Service of The Texas A&M University System.

(4) "Volunteer fire department" means a fire department operated by the fire department's members on a not-for-profit basis. The term includes a fire department that is exempt from federal income tax under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization in Section 501(c)(3) of that code. (V.T.I.C. Art. 21.61, Sec. 1.)

Source Law

Art. 21.61

Sec. 1. In this article:

(1) "Fund" means the volunteer fire department self-insurance fund established under Section 5 of this article.

(2) "Program" means the volunteer fire department motor vehicle self-insurance program

1 established under this article.

2 (3) "Service" means the Texas Forest
3 Service of The Texas A&M University System.

4 (4) "Volunteer fire department" means a
5 fire department operated by its members that is
6 operated on a not-for-profit basis, including a
7 department that is exempt from federal income tax
8 under Section 501(a) of the Internal Revenue Code of
9 1986 (26 U.S.C. Section 501(a)) by being listed as an
10 exempt organization in Section 501(c)(3) of that code
11 (26 U.S.C. Section 501(c)(3)).

12 Revisor's Note

13 Section 1(2), V.T.I.C. Article 21.61, refers to
14 the volunteer fire department motor vehicle
15 self-insurance program "established" under the
16 article. Section 3(a), V.T.I.C. Article 21.61,
17 revised in this chapter in Section 2154.002, requires
18 the Texas Forest Service of The Texas A&M University
19 System to establish the program. Throughout this
20 chapter, the revised law omits references to
21 establishing the program as executed and substitutes
22 references to administering the program because it is
23 clear from the context of Article 21.61 that the
24 service has a continuing duty to administer the
25 program.

26 Revised Law

27 Sec. 2154.002. MOTOR VEHICLE SELF-INSURANCE PROGRAM. (a)
28 The service shall administer a volunteer fire department
29 self-insurance program that:

30 (1) identifies and evaluates risks arising from the
31 use of motor vehicles by volunteer fire departments;

32 (2) maintains a loss-prevention and loss-control
33 program to reduce risks arising from the use of motor vehicles by
34 volunteer fire departments;

35 (3) consolidates and administers volunteer fire
36 department risk management and self-insurance programs; and

37 (4) provides motor vehicle self-insurance coverage in
38 accordance with Section 2154.003.

39 (b) The service may employ staff to administer the program.

1 (c) The director of the service may adopt rules to implement
2 and administer the program. (V.T.I.C. Art. 21.61, Secs. 2, 3.)

3 Source Law

4 Sec. 2. (a) The Texas Forest Service shall
5 administer the volunteer fire department motor vehicle
6 self-insurance program established under this
7 article.

8 (b) The service may employ staff to administer
9 the program.

10 Sec. 3. (a) The service shall establish the
11 program to:

12 (1) identify and evaluate risks arising
13 from the use of motor vehicles by volunteer fire
14 departments;

15 (2) maintain a loss-prevention and
16 loss-control program to reduce risks arising from the
17 use of motor vehicles by volunteer fire departments;

18 (3) consolidate and administer volunteer
19 fire department risk management and self-insurance
20 programs; and

21 (4) provide motor vehicle self-insurance
22 coverage in accordance with Section 4 of this article.

23 (b) The director of the service may adopt rules
24 to implement and administer the program.

25 Revised Law

26 Sec. 2154.003. SELF-INSURANCE POOL; COVERAGE. (a) The
27 program shall administer a self-insurance pool to provide coverage
28 for motor vehicles a volunteer fire department uses for fire
29 fighting.

30 (b) The coverage may indemnify an official, employee,
31 member, or volunteer of a volunteer fire department for liability
32 arising from the use of a covered motor vehicle in performing the
33 person's fire-fighting duties. The maximum limits of coverage are:

34 (1) for bodily injury or death:

35 (A) \$100,000 for each person; and

36 (B) \$300,000 for each single occurrence; and

37 (2) for injury to or destruction of property, \$100,000
38 for each single occurrence.

39 (c) Self-insurance coverage provided under this section may
40 be funded only from money available from the fund.

41 (d) The director of the service may establish:

42 (1) eligibility requirements for participation in
43 coverage under this section; and

44 (2) equipment and safety standards for the motor

1 vehicles to be covered under this section.

2 (e) Coverage limits of self-insurance provided under this
3 section must be based on the liquidity of the fund after deducting
4 the cost of administering this chapter. (V.T.I.C. Art. 21.61,
5 Secs. 4(a), (b), (c), 5(d), (e).)

6 Source Law

7 Sec. 4. (a) The program shall establish a
8 self-insurance pool to provide coverage for motor
9 vehicles used for fire fighting by a volunteer fire
10 department.

11 (b) The coverage may indemnify an official,
12 employee, member, or volunteer of a volunteer fire
13 department for liability arising from the use of a
14 covered motor vehicle in the performance of the fire
15 fighting duties of the official, employee, member, or
16 volunteer. The coverage must be subject to a maximum
17 limit of \$100,000 for each person and \$300,000 for each
18 single occurrence for bodily injury or death and
19 \$100,000 for each single occurrence for injury to or
20 destruction of property.

21 (c) The director of the service may establish:

22 (1) eligibility requirements for
23 participation in coverage under this section; and

24 (2) equipment and safety standards for the
25 motor vehicle to be covered under this section.

26 [Sec. 5]

27 (d) Self-insurance coverage provided under
28 Section 4 of this article may be funded only from money
29 available from the fund.

30 (e) Coverage limits of self-insurance provided
31 under Section 4 of this article must be based on the
32 liquidity of the fund after deduction of the cost of
33 administration of this article.

34 Revisor's Note

35 Section 4(a), V.T.I.C. Article 21.61, requires
36 the volunteer fire department motor vehicle
37 self-insurance program to "establish" a
38 self-insurance pool to provide coverage for volunteer
39 fire department motor vehicles. The revised law omits
40 the requirement to "establish" the pool as executed
41 and substitutes a requirement to "administer" the pool
42 because it is clear from the context of Article 21.61
43 that the volunteer fire department motor vehicle
44 self-insurance program has a continuing duty to
45 administer the pool.

1 Revised Law

2 Sec. 2154.004. PARTICIPATION IN SELF-INSURANCE POOL. (a)
3 To participate in coverage provided under Section 2154.003, a
4 volunteer fire department must submit a written request to the
5 program.

6 (b) The director of the program shall approve the request
7 for participation if each motor vehicle to be covered meets the
8 eligibility requirements and equipment and safety standards
9 established under Section 2154.003(d). (V.T.I.C. Art. 21.61, Sec.
10 4(d).)

11 Source Law

12 (d) To participate in coverage provided under
13 this section, a volunteer fire department must submit
14 a written request to the program. The director of the
15 program shall approve the request if each motor
16 vehicle to be covered meets the eligibility
17 requirements and equipment and safety standards
18 established under Subsection (c) of this section.

19 Revised Law

20 Sec. 2154.005. VOLUNTEER FIRE DEPARTMENT SELF-INSURANCE
21 FUND. (a) The fund is an account in the general revenue fund.

22 (b) The fund is composed of:

23 (1) money collected under Section 2154.007; and

24 (2) interest accruing on money in the fund.

25 (c) Money in the fund may be spent only for:

26 (1) funding self-insurance under the program; or

27 (2) administering this chapter, including paying the
28 salaries and expenses of staff for the program and the fund.
29 (V.T.I.C. Art. 21.61, Secs. 5(a), (b), (c).)

30 Source Law

31 Sec. 5. (a) The volunteer fire department
32 self-insurance fund is an account in the general
33 revenue fund.

34 (b) The fund is composed of:

35 (1) money collected under Section 6 of
36 this article; and

37 (2) interest accruing on money in the
38 fund.

39 (c) Money in the fund may be expended in
40 accordance with legislative appropriation only for:

41 (1) administration of this article,
42 including the salaries and expenses of staff for the
43 program and the fund; or

1 (2) funding self-insurance under the
2 program.

3 Revisor's Note

4 Section 5(c), V.T.I.C. Article 21.61, provides
5 that money in the volunteer fire department
6 self-insurance fund may be spent "in accordance with
7 legislative appropriation." The revised law omits the
8 quoted language as unnecessary because Section 6,
9 Article VIII, Texas Constitution, provides that "[n]o
10 money shall be drawn from the Treasury but in pursuance
11 of specific appropriations made by law."

12 Revised Law

13 Sec. 2154.006. LIMITATION ON STATE'S LIABILITY. The state's
14 liability for a loss covered by self-insurance provided under this
15 chapter is limited to the assets of the fund, and the state is not
16 otherwise liable for that loss. (V.T.I.C. Art. 21.61, Sec. 5(f).)

17 Source Law

18 (f) The state's liability for a loss covered by
19 self-insurance provided under this article is limited
20 to the assets of the fund, and the state is not
21 otherwise liable for that loss.

22 Revised Law

23 Sec. 2154.007. SELF-INSURANCE FEE. (a) The service may
24 assess and collect a reasonable fee from participating volunteer
25 fire departments to provide self-insurance coverage under this
26 chapter. In establishing the amount of the fee, the service shall
27 consider the amount that could be charged to the volunteer fire
28 department for similar insurance coverage provided to that
29 department in accordance with this code.

30 (b) Fees collected under this section shall be deposited to
31 the credit of the fund. (V.T.I.C. Art. 21.61, Sec. 6.)

32 Source Law

33 Sec. 6. (a) The service may levy and collect a
34 reasonable fee from participating volunteer fire
35 departments to provide self-insurance coverage under
36 this article. In establishing the amount of the fee,
37 the service shall consider the amount that could be
38 charged to the volunteer fire department for similar
39 insurance coverage provided to the department in
40 accordance with this code.

(b) Fees collected under this section shall be deposited to the credit of the fund.

Revised Law

Sec. 2154.008. LEGAL REPRESENTATION. (a) The service may employ an attorney to represent a volunteer fire department or an official, employee, member, or volunteer of a volunteer fire department in a liability action for which insurance coverage is provided under this chapter.

(b) The attorney general may not provide the services described by Subsection (a). (V.T.I.C. Art. 21.61, Sec. 7.)

Source Law

Sec. 7. (a) The service may employ an attorney to represent a volunteer fire department or an official, employee, member, or volunteer of a volunteer fire department in a liability action for which insurance coverage is provided under this article.
(b) The attorney general may not provide the services described by Subsection (a) of this section.

[Chapters 2155-2170 reserved for expansion]

CHAPTER 2171. COMMERCIAL GROUP PROPERTY INSURANCE

Sec. 2171.001. DEFINITION 1146

Sec. 2171.002. AUTHORIZATION FOR ISSUANCE 1147

Sec. 2171.003. POLICY FORM FILINGS 1147

Sec. 2171.004. RATE FILINGS 1148

Sec. 2171.005. IDENTIFICATION OF INSURED REQUIRED 1148

CHAPTER 2171. COMMERCIAL GROUP PROPERTY INSURANCE

Revised Law

Sec. 2171.001. DEFINITION. In this chapter, "large risk" means an insured described by Section 2301.004. (V.T.I.C. Art. 5.41-3, Secs. (a) (part), (b) (part).)

Source Law

(a) . . . [a large risk] as that term is described by Section 8(f), Article 5.13-2, of this code
(b) . . . [a large risk] as that term is described by Section 8(f), Article 5.13-2, of this code,

Revisor's Note

Sections (a) and (b), V.T.I.C. Article 5.41-3, refer to a large risk "as that term is described by

Section 8(f), Article 5.13-2, of this code." Section 8(f), V.T.I.C. Article 5.13-2, is revised as Section 2301.004 of this code. Section 2301.004, however, does not describe a "large risk"; the section describes an insured that would be considered a large risk. Therefore, the revised law defines a "large risk" as "an insured described by Section 2301.004."

Revised Law

Sec. 2171.002. AUTHORIZATION FOR ISSUANCE. An insurer may write commercial group property insurance for:

(1) a group of businesses that constitutes a large risk if the members of the group have clearly identifiable underwriting characteristics; or

(2) an association that constitutes a large risk if the members of the association are engaged in similar undertakings. (V.T.I.C. Art. 5.41-3, Sec. (a) (part).)

Source Law

Art. 5.41-3. (a) An insurer may write commercial group property insurance for a group of businesses or for an association that constitutes a large risk . . . if:

(1) the members of a group of businesses have clearly identifiable underwriting characteristics; or

(2) the members of an association are engaged in similar undertakings.

Revised Law

Sec. 2171.003. POLICY FORM FILINGS. (a) An insurer shall file a policy form with the commissioner before using the form for a group of businesses or an association described by Section 2171.002 in which each member of the group or association is not a large risk.

(b) A filing made under this section is for informational purposes only. (V.T.I.C. Art. 5.41-3, Sec. (b) (part).)

Source Law

(b) An insurer, before using a policy form for a group of businesses or an association described by Subsection (a) of this article in which each member of the group or association is not a large risk . . . shall file the policy form with the

1 commissioner. A filing made under this subsection is
2 for informational purposes only.

3 Revised Law

4 Sec. 2171.004. RATE FILINGS. An insurer shall file with
5 the commissioner in accordance with Chapter 2251 the following
6 information for commercial group property insurance written under
7 this chapter in this state:

- 8 (1) rates;
9 (2) supplementary rating information; and
10 (3) pertinent supporting information. (V.T.I.C.
11 Art. 5.41-3, Sec. (c).)

12 Source Law

13 (c) An insurer, in accordance with Sections 3
14 through 7, Article 5.13-2, of this code, shall file
15 with the commissioner all rates, supplementary rating
16 information, and pertinent supporting information for
17 commercial group property insurance written under this
18 article in this state.

19 Revisor's Note

20 Section (c), V.T.I.C. Article 5.41-3, requires an
21 insurer writing commercial group property insurance to
22 file rates, supplementary rating information, and
23 supporting information in accordance with Sections
24 3-7, V.T.I.C. Article 5.13-2, which are revised in
25 Chapter 2251 of this code. Chapter 2251 also includes
26 provisions derived from other sections of Article
27 5.13-2 and from V.T.I.C. Article 5.13-2C. The revised
28 law appropriately substitutes a reference to Chapter
29 2251 for the reference to Sections 3-7, Article
30 5.13-2, because the provisions of Chapter 2251 that
31 are not derived from the referenced sections are
32 either necessary to construe the provisions derived
33 from the referenced sections or are inapplicable by
34 their own terms in the context of commercial group
35 property insurance.

36 Revised Law

37 Sec. 2171.005. IDENTIFICATION OF INSURED REQUIRED. An

insurer filing a policy form under Section 2171.003 or rates and related information under Section 2171.004 shall clearly identify the group of businesses or the association to be insured. (V.T.I.C. Art. 5.41-3, Sec. (d).)

Source Law

(d) An insurer filing a policy form or rates and related information under Subsection (b) or (c) of this article shall clearly identify the group of businesses or the association to be insured.

[Chapters 2172-2200 reserved for expansion]

CHAPTER 2201. RISK RETENTION GROUPS AND PURCHASING GROUPS

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14 CHAPTER 2201. RISK RETENTION GROUPS AND PURCHASING GROUPS

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Revised Law

17 Sec. 2201.001. PURPOSE OF CHAPTER. The purpose of this
 18 chapter is to:

19 (1) regulate the formation and operation of risk
 20 retention groups and purchasing groups in this state formed under:

21 (A) the Product Liability Risk Retention Act of
 22 1981 (15 U.S.C. Section 3901 et seq.); or

23 (B) the Liability Risk Retention Act of 1986 (15
 24 U.S.C. Section 3901 et seq.); and

25 (2) protect the public by the appropriate regulation
 26 of groups described by Subdivision (1) to the extent permitted by
 27 law. (V.T.I.C. Art. 21.54, Sec. 1.)

28 Source Law

29 Art. 21.54
 30 Sec. 1. The purpose of this article is to
 31 regulate the formation and operation of risk retention
 32 groups and purchasing groups in this state formed
 33 pursuant to the provisions of the federal Product
 34 Liability Risk Retention Act of 1981 (Public Law
 35 97-45) and the federal Liability Risk Retention Act of
 36 1986 and to protect the public by the appropriate
 37 regulation of these groups to the extent permitted by
 38 law.

1 Revised Law

2 Sec. 2201.002. GENERAL DEFINITIONS. In this chapter:

3 (1) "Agent" includes the terms "agent" and "broker" as
4 used in the Liability Risk Retention Act of 1986 (15 U.S.C. Section
5 3901 et seq.).

6 (2) "Hazardous financial condition" means a condition
7 in which a risk retention group, based on the group's present or
8 reasonably anticipated financial condition and although the group
9 is not yet financially impaired or insolvent, is unlikely to be able
10 to:

11 (A) meet obligations to policyholders with
12 respect to known claims and reasonably anticipated claims; or

13 (B) pay other obligations in the normal course of
14 business.

15 (3) "Insurance" means primary insurance, excess
16 insurance, reinsurance, surplus lines insurance, and any other
17 arrangement for transferring and distributing risk that is
18 determined to be insurance under the laws of this state.

19 (4) "State" means any state of the United States or the
20 District of Columbia. (V.T.I.C. Art. 21.54, Secs. 2(4), (11),
21 (12), (13).)

22 Source Law

23 Sec. 2. In this article:

24 (4) "Insurance" means primary insurance,
25 excess insurance, reinsurance, surplus lines
26 insurance, and any other arrangement for transferring
27 and distributing risk that is determined to be
28 insurance under the law of this state.

29 (11) "State" means any state of the United
30 States or the District of Columbia.

31 (12) "Hazardous financial condition"
32 means that, based on its present or reasonably
33 anticipated financial condition, a risk retention
34 group, although not yet financially impaired or
35 insolvent, is unlikely to be able to:

36 (A) meet obligations to
37 policyholders with respect to known claims and
38 reasonably anticipated claims; or

39 (B) pay other obligations in the
40 normal course of business.

41 (13) "Agent" includes the terms "agent"
42 and "broker" as used in the federal Liability Risk
43 Retention Act of 1986.

1 Revisor's Note

2 (1) Section 2(1), V.T.I.C. Article 21.54,
3 defines "board" as the "State Board of Insurance."
4 Chapter 685, Acts of the 73rd Legislature, Regular
5 Session, 1993, abolished the State Board of Insurance
6 and transferred its functions to the commissioner of
7 insurance and the Texas Department of Insurance.
8 Throughout this chapter, references to the board have
9 been changed appropriately. For this reason, the
10 revised law omits the definition of "board." The
11 omitted law reads:

12 (1) "Board" means the State
13 Board of Insurance.

14 (2) Section 2(2), V.T.I.C. Article 21.54,
15 defines "commissioner" as the "commissioner of
16 insurance of the State of Texas or the commissioner,
17 director, or superintendent of insurance in any other
18 state." The revised law omits that definition as
19 unnecessary. Section 31.001 of this code defines
20 "commissioner" for purposes of this code and the other
21 insurance laws of this state to mean the commissioner
22 of insurance of this state. Throughout this chapter, a
23 reference to "commissioner of this state" is revised
24 as "commissioner" and any reference to a
25 "commissioner" that includes the commissioner,
26 director, or superintendent of insurance in another
27 state is drafted to include those individuals. The
28 omitted law reads:

29 (2) "Commissioner" means the
30 commissioner of insurance of the State of
31 Texas or the commissioner, director, or
32 superintendent of insurance in any other
33 state.

34 Revised Law

35 Sec. 2201.003. LIABILITY DEFINED. (a) In this chapter,
36 except as provided by Subsection (b) or as otherwise provided by

1 this chapter:

2 (1) "Completed operations liability" means liability,
3 including liability for activities that are completed or abandoned
4 before the date of the occurrence giving rise to the liability,
5 arising out of the installation, maintenance, or repair of any
6 product at a site that is not owned or controlled by:

7 (A) a person who performs that work; or

8 (B) a person who hires an independent contractor
9 to perform that work.

10 (2) "Liability" means legal liability for damages,
11 including costs of defense, legal costs, fees, and other claims
12 expenses, incurred because of personal injury, property damage, or
13 other damage or loss to another person resulting from or arising out
14 of:

15 (A) a product, trade, or business, regardless of
16 whether the business operates for profit;

17 (B) operations, premises, or services, including
18 professional services; or

19 (C) any activity of:

20 (i) a state or local government; or

21 (ii) an agency or political subdivision of
22 a state or local government.

23 (3) "Product liability" means liability for damages
24 incurred because of any personal injury, death, emotional harm,
25 consequential economic damage, or property damage, including
26 damage resulting from the loss of use of property, arising out of
27 the manufacture, design, importation, distribution, packaging,
28 labeling, lease, or sale of a product, but does not include the
29 liability of any person for those damages if the product involved
30 was in the possession of that person when the incident giving rise
31 to the claim occurred.

32 (b) In this chapter, "liability" does not include:

33 (1) liability for damages incurred because of personal
34 injury, property damage, or other damage or loss resulting from a

1 personal, familial, or household activity or responsibility; or

2 (2) an employer's liability with respect to the
3 employer's employees other than legal liability under the Federal
4 Employers' Liability Act (45 U.S.C. Section 51 et seq.). (V.T.I.C.
5 Art. 21.54, Secs. 2(3), (5), (6), (7).)

6 Source Law

7 Sec. 2. In this article:

8 (3) "Completed operations liability"
9 means liability, including liability for activities
10 that are completed or abandoned before the date of the
11 occurrence giving rise to the liability, arising out
12 of the installation, maintenance, or repair of any
13 product at a site that is not owned or controlled by:

14 (A) a person who performs that work;
15 or

16 (B) a person who hires an independent
17 contractor to perform that work.

18 (5) "Product liability" means liability
19 for damages because of any personal injury, death,
20 emotional harm, consequential economic damage, or
21 property damage, including damage resulting from the
22 loss of use of property, arising out of the
23 manufacture, design, importation, distribution,
24 packaging, labeling, lease, or sale of a product, but
25 does not include the liability of any person for those
26 damages if the product involved was in the possession
27 of such person when the incident giving rise to the
28 claim occurred.

29 (6) "Liability":

30 (A) means legal liability for
31 damages, including costs of defense, legal costs,
32 fees, and other claims expenses, because of injuries
33 to other persons, damage to their property, or other
34 damage or loss to other persons resulting from or
35 arising out of:

36 (i) a business, whether profit
37 or nonprofit, a trade, a product, services, including
38 professional services, premises, or operations; or

39 (ii) any activity of any state
40 or local government or any agency or political
41 subdivision thereof; but

42 (B) does not include personal risk
43 liability or an employer's liability with respect to
44 its employees other than legal liability under the
45 Federal Employers' Liability Act (45 U.S.C. 51 et
46 seq.).

47 (7) "Personal risk liability" means
48 liability for damages because of injury to any person,
49 damage to property, or other loss or damage resulting
50 from any personal, familial, or household
51 responsibilities or activities rather than
52 responsibilities or activities covered by Subdivision
53 (6) of this section.

54 Revisor's Note

55 Section 2(7), V.T.I.C. Article 21.54, defines
56 "personal risk liability" as including certain

1 responsibilities or activities "rather than
2 responsibilities or activities covered by Subdivision
3 (6) of this section." The revised law omits the quoted
4 language as unnecessary because it duplicates the
5 statement in Section 2(6)(B), revised in Subsection
6 (b), that "liability" as defined by Section 2(6)(A),
7 revised as Subsection (a), does not include "personal
8 risk liability."

9 Revised Law

10 Sec. 2201.004. AGENT LICENSE REQUIRED. (a) A person, firm,
11 partnership, or corporation may not act or offer to act as an agent
12 for, or aid in any manner in the solicitation, negotiation, or
13 placement of insurance on behalf of, a risk retention group or
14 purchasing group operating in this state or a group member in this
15 state without first obtaining a license as an agent under:

16 (1) Chapter 4051, if a resident of this state; or

17 (2) Chapter 4056, if a nonresident of this state.

18 (b) A person, firm, partnership, or corporation must comply
19 with Chapter 981 before the person, firm, partnership, or
20 corporation, on behalf of a purchasing group or a group member in
21 this state:

22 (1) acts or offers to act as an agent for an insurer
23 not authorized to engage in business in this state; or

24 (2) aids in any manner in the solicitation,
25 negotiation, or placement of insurance with an insurer not
26 authorized to engage in business in this state. (V.T.I.C. Art.
27 21.54, Secs. 10(a), (b).)

28 Source Law

29 Sec. 10. (a) No person, firm, partnership, or
30 corporation shall act or offer to act as an agent for a
31 risk retention group, or aid in any manner in the
32 solicitation, negotiation, or placement of insurance
33 on behalf of a risk retention group operating in this
34 state or any of its members in this state without first
35 obtaining a license as an agent under Article 21.14 of
36 this code in the case of a resident of this state or
37 Article 21.11 of this code in the case of a nonresident
38 of this state.

39 (b) No person, firm, partnership, or

1 corporation shall act or offer to act as an agent for a
2 purchasing group or aid in any manner in the
3 solicitation, negotiation, or placement of insurance
4 on behalf of a purchasing group operating in this state
5 or any of its members in this state without first
6 obtaining a license as an agent pursuant to Article
7 21.14 of this code in the case of a resident of this
8 state or Article 21.11 of this code in the case of a
9 nonresident of this state. Furthermore, no person,
10 firm, partnership, or corporation shall act or offer
11 to act as an agent or aid in any manner in the
12 solicitation, negotiation, or placement of insurance
13 with an insurer not qualified to do business in this
14 state on behalf of a purchasing group or its members
15 located in this state without first complying with
16 Article 1.14-2 of this code. No person, firm,
17 partnership, or corporation shall solicit members of
18 the purchasing group for coverage under the purchasing
19 group's policy without first obtaining proper
20 licensing to act as an insurance agent.

21 Revised Law

22 Sec. 2201.005. EXEMPTION FROM CERTAIN REQUIREMENTS. (a) A
23 provision of Chapter 981, 4055, or 4056 does not apply to an agent
24 described by Subsection (b) if the provision:

- 25 (1) requires residency in this state;
26 (2) requires countersignatures;
27 (3) prohibits the solicitation of insurance in this
28 state by a nonresident or the payment of commissions to a
29 nonresident; or
30 (4) prohibits a nonresident from acting as a surplus
31 or excess lines agent.

32 (b) The exemption provided by Subsection (a) applies to an
33 agent licensed under Chapter 981, 4055, or 4056 who is acting on
34 behalf of a risk retention group or purchasing group operating in
35 this state or a group member in this state in providing or placing
36 liability insurance for risks located in this state. (V.T.I.C.
37 Art. 21.54, Sec. 10(c).)

38 Source Law

39 (c) Any provision of Article 1.14-2, 21.09, or
40 21.11 of this code, requiring residency in this state,
41 requiring countersignatures, prohibiting the payment
42 of commissions to a nonresident, prohibiting the
43 solicitation of insurance in this state by a
44 nonresident, or prohibiting a nonresident from acting
45 as a surplus or excess lines agent shall not apply in
46 the case of an agent licensed pursuant to those
47 articles when the agent acts on behalf of a risk
48 retention group or purchasing group operating in this
49 state or any of their members in this state in the

1 provision or placement of liability insurance for
2 risks located in this state.

3 Revised Law

4 Sec. 2201.006. AUTHORITY OF COMMISSIONER. (a) To enforce
5 the laws of this state, the commissioner may use any authority
6 provided by this code that is not specifically preempted by the
7 Product Liability Risk Retention Act of 1981, as amended by the
8 Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et
9 seq.), including the authority to investigate, issue a subpoena,
10 conduct a deposition or hearing, issue an order, and impose a
11 penalty.

12 (b) The commissioner shall rely on the procedural laws and
13 rules of this state with regard to an investigation, an
14 administrative proceeding, or litigation. (V.T.I.C. Art. 21.54,
15 Secs. 12(a), (b).)

16 Source Law

17 Sec. 12. (a) The commissioner of this state is
18 authorized to make use of any of the powers under this
19 code to enforce the laws of this state so long as those
20 powers are not specifically preempted by the Product
21 Liability Risk Retention Act of 1981, as amended by the
22 Liability Risk Retention Act of 1986. These powers
23 include the commissioner's administrative authority to
24 investigate, issue subpoenas, conduct depositions and
25 hearings, issue orders, and impose penalties.

26 (b) With regard to any investigation,
27 administrative proceedings, or litigation, the
28 commissioner of this state shall rely on the
29 procedural law and regulations of the state.

30 Revisor's Note

31 Section 12(b), V.T.I.C. Article 21.54, refers to
32 procedural law and "regulations" of this state.
33 Throughout this chapter, the revised law substitutes
34 "rules" for "regulations" in this context because
35 under Section 311.005(5), Government Code (Code
36 Construction Act), applicable to the revised law, a
37 rule is defined to include a regulation, and "rule" is
38 the more commonly used term. In addition, subsequent
39 provisions revised in this chapter refer to both
40 "rules" and "regulations." For the reason stated in
41 this revisor's note, the revised law throughout this

chapter omits references to "regulations" in that context.

Revised Law

Sec. 2201.007. ANNUAL REPORT TO COMMISSIONER. An agent licensed as required by Section 2201.004 shall report to the commissioner not later than March 1 of each year the activities and scope of services being provided to a risk retention group or purchasing group. The report must be made in accordance with rules adopted by the commissioner. (V.T.I.C. Art. 21.54, Sec. 10(e).)

Source Law

(e) An agent licensed as provided by Subsection (a) or (b) of this section must report to the commissioner of this state not later than March 1 of each year the activities and scope of services being provided to the risk retention group or purchasing group in accordance with rules promulgated by the board.

Revised Law

Sec. 2201.008. RULES. The commissioner may adopt rules relating to risk retention groups and purchasing groups that are necessary to carry out this chapter. (V.T.I.C. Art. 21.54, Sec. 15.)

Source Law

Sec. 15. The board may adopt rules relating to risk retention groups and purchasing groups that are necessary to carry out this article.

[Sections 2201.009-2201.050 reserved for expansion]

SUBCHAPTER B. RISK RETENTION GROUP QUALIFICATIONS

Revised Law

Sec. 2201.051. GENERAL QUALIFICATIONS OF RISK RETENTION GROUP. A risk retention group must be a corporation or other limited liability association that:

(1) is organized primarily to assume and spread, and engages primarily in assuming and spreading, all or any portion of the liability exposure of the group's members; and

(2) otherwise meets the qualifications of this subchapter. (V.T.I.C. Art. 21.54, Sec. 2(10) (part).)

Source Law

Sec. 2. In this article:

(10) "Risk retention group" means any corporation or other limited liability association:

(A) which is organized for the primary purpose of conducting the activity described under Paragraph (B) of this subdivision;

(B) whose primary activity consists of assuming and spreading all or any portion of the liability exposure of its group members; and

[(C) which:

(i) is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the commissioner of at least one state that it satisfied the capitalization requirements of that state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability as those terms were defined in the Product Liability Risk Retention Act of 1981 before the effective date of the federal Liability Risk Retention Act of 1986;

(D) which does not exclude any person from membership in the group solely to provide for members of that group a competitive advantage over such a person;

(E) which:

(i) has as its members only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in similar or related businesses or activities with respect to the liability to which those members are exposed by virtue of any related, similar, or common business trade, product, services, premises, or operations;

(G) whose activities do not include the provision of insurance other than liability insurance for assuming and spreading all or any portion of the liability of its group members, and reinsurance with respect to the liability of any other risk retention group, or any members of such other group, which is engaged in businesses or activities so that the group or member meets the requirement of Subdivision (6) of this section for membership in the risk retention group which provides the reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group".]

1 Revised Law

2 Sec. 2201.052. NAME OF GROUP. A risk retention group must
3 include in its name the phrase "risk retention group." (V.T.I.C.
4 Art. 21.54, Sec. 2(10) (part).)

5 Source Law

6 Sec. 2. In this article:

7 (10) ["Risk retention group" means any
8 corporation or other limited liability association:]

9 (H) the name of which includes the
10 phrase "Risk Retention Group".
11

12 Revised Law

13 Sec. 2201.053. STATUS AS LIABILITY INSURER REQUIRED. A
14 corporation or other limited liability association must be
15 chartered and authorized to engage in the business of insurance as a
16 liability insurer under the laws of any state to act as a risk
17 retention group. (V.T.I.C. Art. 21.54, Sec. 2(10) (part).)

18 Source Law

19 Sec. 2. In this article:

20 (10) ["Risk retention group" means any
21 corporation or other limited liability association:]

22 (C) which:

23 (i) is chartered and licensed
24 as a liability insurance company and authorized to
25 engage in the business of insurance under the laws of
26 any state; or
27

28 . . .

29 Revisor's Note

30 Section 2(10), V.T.I.C. Article 21.54, provides
31 that a risk retention group must be "chartered and
32 licensed as a liability insurance company and
33 authorized to engage in the business of insurance" in
34 any state. The revised law omits the requirement to be
35 "licensed" as included within the meaning of
36 "authorized" because, in any state that requires
37 licensure, a liability insurance company would not be
38 authorized to engage in the business of insurance
39 until the company obtained a license. Similar changes
40 are made throughout this chapter.

1 Revised Law

2 Sec. 2201.054. QUALIFICATIONS REGARDING AUTHORITY OF
3 CERTAIN ENTITIES TO ENGAGE IN BUSINESS. (a) In this section,
4 "completed operations liability" and "product liability" have the
5 meanings assigned by the Product Liability Risk Retention Act of
6 1981 (15 U.S.C. Section 3901 et seq.) before the effective date of
7 the Liability Risk Retention Act of 1986 (15 U.S.C. Section 3901 et
8 seq.).

9 (b) Notwithstanding Section 2201.053, a corporation or
10 other limited liability association may be considered a risk
11 retention group if:

12 (1) before January 1, 1985, the corporation or
13 association:

14 (A) was chartered and authorized to engage in the
15 business of insurance under the laws of Bermuda or the Cayman
16 Islands; and

17 (B) had certified to the commissioner, director,
18 or superintendent of insurance of at least one state that it
19 satisfied the capitalization requirements of that state; and

20 (2) since January 1, 1985, the corporation or
21 association has been continuously engaged in business solely to
22 continue to provide insurance to cover completed operations
23 liability or product liability. (V.T.I.C. Art. 21.54, Sec. 2(10)
24 (part).)

25 Source Law

26 Sec. 2. In this article:

27 (10) ["Risk retention group" means any
28 corporation or other limited liability association:]

29 (C) which:

30 [(i) is chartered and licensed
31 as a liability insurance company and authorized to
32 engage in the business of insurance under the laws of
33 any state; or]

34 (ii) before January 1, 1985,
35 was chartered or licensed and authorized to engage in
36 the business of insurance under the laws of Bermuda or
37 the Cayman Islands and, before such date, had
38 certified to the commissioner of at least one state
39 that it satisfied the capitalization requirements of
40 that state, except that any such group shall be
41

1 considered to be a risk retention group only if it has
2 been engaged in business continuously since such date
3 and only for the purpose of continuing to provide
4 insurance to cover product liability or completed
5 operations liability as those terms were defined in
6 the Product Liability Risk Retention Act of 1981
7 before the effective date of the federal Liability
8 Risk Retention Act of 1986;

9 . . .

10 Revisor's Note

11 Section 2(10)(C), V.T.I.C. Article 21.54, refers
12 to the "commissioner" of at least one state. The
13 revised law substitutes "commissioner, director, or
14 superintendent of insurance" for the reason stated in
15 Revisor's Note (2) to Section 2201.002.

16 Revised Law

17 Sec. 2201.055. QUALIFICATIONS REGARDING MEMBERSHIP. (a) A
18 risk retention group must be composed of members who are engaged in
19 similar or related businesses or activities with respect to the
20 liability to which those members are exposed by virtue of any
21 related, similar, or common product, trade, business, operations,
22 premises, or services.

23 (b) A risk retention group must have:

24 (1) as members, only persons who are provided
25 insurance by the group; or

26 (2) as the sole owner, an organization that has:

27 (A) as members, only persons who comprise the
28 membership of the group; and

29 (B) as owners, only persons who comprise the
30 membership of the group and are provided insurance by the group.

31 (c) A risk retention group may not exclude a person from
32 membership in the group solely to provide a competitive advantage
33 for group members over that person. (V.T.I.C. Art. 21.54, Sec.
34 2(10) (part).)

35 Source Law

36 Sec. 2. In this article:

37 (10) ["Risk retention group" means any
38 corporation or other limited liability association:]

39 . . .

40 (D) which does not exclude any person

1 from membership in the group solely to provide for
2 members of that group a competitive advantage over
3 such a person;

4 (E) which:

5 (i) has as its members only
6 persons who comprise the membership of the risk
7 retention group and who are provided insurance by such
8 group; or

9 (ii) has as its sole owner an
10 organization which has as its members only persons who
11 comprise the membership of the risk retention group
12 and which has as its owners only persons who comprise
13 the membership of the risk retention group and who are
14 provided insurance by such group;

15 (F) whose members are engaged in
16 similar or related businesses or activities with
17 respect to the liability to which those members are
18 exposed by virtue of any related, similar, or common
19 business trade, product, services, premises, or
20 operations;

21 . . .

22 Revised Law

23 Sec. 2201.056. AUTHORIZED ACTIVITIES. (a) A risk
24 retention group may provide:

25 (1) liability insurance for assuming and spreading all
26 or any portion of the liability of the group's members; and

27 (2) reinsurance with respect to the liability of
28 another risk retention group, or a member of that group, engaged in
29 businesses or activities that meet the requirements of Section
30 2201.055(a) for membership in the group providing reinsurance.

31 (b) A risk retention group may not engage in activities that
32 include providing insurance other than the insurance described by
33 Subsection (a). (V.T.I.C. Art. 21.54, Sec. 2(10) (part).)

34 Source Law

35 Sec. 2. In this article:

36 (10) ["Risk retention group" means any
37 corporation or other limited liability association:]

38 . . .
39 (G) whose activities do not include
40 the provision of insurance other than liability
41 insurance for assuming and spreading all or any
42 portion of the liability of its group members, and
43 reinsurance with respect to the liability of any other
44 risk retention group, or any members of such other
45 group, which is engaged in businesses or activities so
46 that the group or member meets the requirement of
47 Subdivision (6) of this section for membership in the
48 risk retention group which provides the reinsurance;
49 and

50 . . .

1 70th Leg., R.S., Ch. 46.)

2 Source Law

3 Sec. 3. (a) Except as otherwise provided by
4 this article, a risk retention group seeking to be
5 chartered in this state must:

6 (1) be chartered and licensed as an
7 insurance company authorized by Chapter 2, 8, 15, or 19
8 of this code; and

9 (2) comply with all of the laws, rules,
10 regulations, and requirements applicable to insurers
11 chartered and licensed under those chapters and with
12 Section 4 of this article to the extent such
13 requirements are not a limitation on laws, rules,
14 regulations, or requirements of this state.

15 (b) Except as required by this article, a risk
16 retention group seeking to be chartered in this state
17 must be chartered and licensed as an insurance company
18 authorized by Chapters 2 and 8 of this code and must
19 comply with all of the laws, rules, regulations, and
20 requirements, including Article 1.36 of this code,
21 applicable to insurers chartered and licensed under
22 those chapters.

23 Revisor's Note

24 (1) Section 3(a), V.T.I.C. Article 21.54,
25 requires a risk retention group to be chartered and
26 licensed as an insurance company authorized by
27 "Chapter 2, 8, 15, or 19 of this code." V.T.I.C.
28 Chapter 2 in pertinent part was revised as Chapter 822
29 of this code, V.T.I.C. Chapter 8 was revised as
30 Chapters 861 and 984 of this code, V.T.I.C. Chapter 15
31 was revised as Chapters 826 and 883 of this code, and
32 V.T.I.C. Chapter 19 was revised as Chapter 942 of this
33 code. The revised law does not reference Chapter 826
34 of this code because that chapter governs the
35 conversion of a mutual insurance company to a stock
36 insurance company and does not have any provision for
37 the charter of an insurance company. The revised law
38 also does not reference Chapter 984 of this code
39 because that chapter governs Mexican casualty
40 companies that are organized under the laws of the
41 United Mexican States or any state of that nation.
42 Section 2201.053 of this chapter requires that an
43 insurer be chartered under the laws of any "state" to

1 be a risk retention group, and Section 2201.002(4) of
2 this chapter defines "state" to include a state of the
3 United States or the District of Columbia. Section
4 2(10)(C), V.T.I.C. Article 21.54, revised in this
5 chapter as Section 2201.054, provides an exception to
6 that general requirement, but the exception is
7 inapplicable in this context. Consequently, a Mexican
8 casualty company could never meet the general
9 requirements in Section 2201.053, and a reference in
10 this section to Chapter 984 is unnecessary.
11 Throughout this chapter, references to "Chapter 2, 8,
12 15, or 19" have been revised accordingly.

13 (2) Section 3(a), V.T.I.C. Article 21.54,
14 requires a risk retention group applying for a charter
15 in this state to be authorized to engage in business
16 under "Chapter 2, 8, 15, or 19 of this code." However,
17 Section 3(b), V.T.I.C. Article 21.54, as amended by
18 Chapter 46, Acts of the 70th Legislature, Regular
19 Session, 1987, requires the group to be authorized to
20 engage in business under "Chapters 2 and 8 of this
21 code."

22 Section 3, V.T.I.C. Article 21.54, was amended by
23 Chapters 46 and 115, Acts of the 70th Legislature,
24 Regular Session, 1987. Before amendment by that
25 legislature, Section 3(b) required a risk retention
26 group applying for a charter in this state to be
27 authorized to engage in business under V.T.I.C.
28 Chapters 2 and 8 and required the group to comply with
29 all laws applicable to insurers chartered and
30 authorized under those chapters. Chapter 46, Acts of
31 the 70th Legislature, Regular Session, 1987, amended
32 Section 3(b) to expressly state that V.T.I.C. Article
33 1.36 applies to a risk retention group applying for a
34 charter in this state. During the same legislature,

1 the text of V.T.I.C. Article 21.54 was rewritten in its
2 entirety by Chapter 115, Acts of the 70th Legislature,
3 Regular Session, 1987, and the requirement that a
4 group be authorized under V.T.I.C. Chapters 2 and 8
5 that was previously contained in Section 3(b) was
6 moved to Section 3(a).

7 Following the regular session of the 70th
8 Legislature, Section 3(a), as enacted by Chapter 115,
9 Acts of the 70th Legislature, Regular Session, 1987,
10 was amended by Chapter 67, Acts of the 70th
11 Legislature, 2nd Called Session, 1987. Section 3(a),
12 as amended by that act, required a risk retention group
13 applying for a charter in this state to be authorized
14 under V.T.I.C. Chapter 2, 8, 15, or 19.

15 It is clear from the legislative history that the
16 requirement in Section 3(b), as amended by Chapter 46,
17 Acts of the 70th Legislature, Regular Session, 1987,
18 that a risk retention group applying for a charter in
19 this state be authorized under V.T.I.C. Chapters 2 and
20 8 was impliedly repealed by the amendment of Section
21 3(a) by Chapter 67, Acts of the 70th Legislature, 2nd
22 Called Session, 1987, which required that the group be
23 authorized under V.T.I.C. Chapter 2, 8, 15, or 19,
24 revised in pertinent part in this code as Chapters 822,
25 861, 883, and 942, respectively. The revised law is
26 drafted accordingly.

27 Revised Law

28 Sec. 2201.102. CHARTER APPLICATION. (a) A risk retention
29 group that applies to be chartered in this state shall provide to
30 the commissioner with the application for charter the following in
31 accordance with rules adopted by the commissioner:

- 32 (1) the group's name;
33 (2) the identity of the group's initial members;
34 (3) the identity of the individuals who organized the

1 group or who will provide administrative services or otherwise
2 influence or control the group's activities;

3 (4) the amount and nature of initial capitalization;

4 (5) the coverages to be afforded; and

5 (6) the states in which the group intends to operate.

6 (b) Immediately on receipt of an application for charter,
7 the commissioner shall provide summary information concerning the
8 filing, including the information provided under Subsection (a), to
9 the National Association of Insurance Commissioners. (V.T.I.C.
10 Art. 21.54, Secs. 3(d), (e).)

11 Source Law

12 (d) With its application for charter, a risk
13 retention group seeking to be chartered in this state
14 shall provide to the commissioner of this state in
15 accordance with rules adopted by the board, the
16 following:

17 (1) the name of the risk retention group;

18 (2) the identity of the initial members of
19 the group;

20 (3) the identity of those individuals who
21 organized the group or who will provide administrative
22 services or otherwise influence or control the
23 activities of the group;

24 (4) the amount and nature of initial
25 capitalization;

26 (5) the coverages to be afforded; and

27 (6) the states in which the group intends
28 to operate.

29 (e) Immediately on receipt of an application
30 for charter, the commissioner of this state shall
31 provide summary information concerning the filing to
32 the National Association of Insurance Commissioners,
33 including the information furnished pursuant to
34 Subsection (d) of this section.

35 Revised Law

36 Sec. 2201.103. PLAN OF OPERATION; REVISIONS. (a) Except as
37 provided by Subsection (b), before a risk retention group chartered
38 in this state may offer insurance in any state, the group must
39 submit to the commissioner for approval a plan of operation as
40 described by Section 2201.202.

41 (b) A risk retention group is not required to submit a plan
42 of operation under this section with respect to any kind or
43 classification of liability insurance that:

44 (1) was defined in the Product Liability Risk
45 Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as that Act

1 existed before October 27, 1986; and

2 (2) was offered before October 27, 1986, by any risk
3 retention group that had been chartered and operating for at least
4 three years before that date.

5 (c) The risk retention group must submit a revision of the
6 group's plan of operation to the commissioner and the commissioner
7 must approve the revision before the group:

8 (1) offers an additional line of insurance in this
9 state or in any other state; or

10 (2) effects a change in the group's operations as
11 described in the plan of operation. (V.T.I.C. Art. 21.54, Secs.
12 3(b), as amended Acts 70th Leg., R.S., Ch. 115, (c).)

13 Source Law

14 (b) Before it may offer insurance in any state,
15 each risk retention group also must submit for
16 approval to the commissioner of this state a plan of
17 operation or a feasibility study. The risk retention
18 group shall not offer any additional lines of
19 insurance in this state or in any other state or effect
20 any change in its operations as described in its plan
21 of operation before a revision of the plan is submitted
22 to and approved by the commissioner.

23 (c) The provisions of Subsection (b) of this
24 section relating to the submission of a plan of
25 operation or feasibility study shall not apply with
26 respect to any kind or classification of liability
27 insurance which:

28 (1) was defined in the federal Product
29 Liability Risk Retention Act of 1981 (Public Law
30 97-45) before October 27, 1986; and

31 (2) was offered before such date by any
32 risk retention group which had been chartered and
33 operating for not less than three years before such
34 date.

35 Revisor's Note

36 Section 3(b), V.T.I.C. Article 21.54, as amended
37 by Chapter 115, Acts of the 70th Legislature, Regular
38 Session, 1987, and Section 3(c), V.T.I.C. Article
39 21.54, refer to "a plan of operation or a feasibility
40 study." Throughout this chapter, the revised law
41 omits references to "feasibility study" and refers
42 only to "plan of operation" for consistency of
43 terminology and because there is no distinction made
44 between a "feasibility study" and a "plan of

operation."

Revised Law

Sec. 2201.104. FILING FEE. (a) In addition to all other fees imposed on an insurer chartered and authorized to engage in business under Chapter 822, 861, 883, or 942, a risk retention group chartered in this state shall pay a filing fee in an amount not to exceed \$1,000 as set by rules adopted by the commissioner.

(b) Fees collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account to pay expenses incurred by the commissioner under Sections 2201.102 and 2201.103. (V.T.I.C. Art. 21.54, Sec. 3(f).)

Source Law

(f) In addition to all other fees imposed on an insurance company chartered and licensed pursuant to Chapter 2, 8, 15, or 19 of this code, the risk retention group shall pay a filing fee not to exceed \$1,000 as established by board regulation for expenses incurred by the board in connection with Subsections (b), (d), and (e) of this section. Fees collected under this section shall be deposited in the State Treasury to the credit of the State Board of Insurance operating fund.

Revisor's Note

(1) Section 3(f), V.T.I.C. Article 21.54, refers to an insurer that is "chartered and licensed" under specified chapters of this code. Throughout this chapter, the revised law substitutes "authorized" for "licensed" in this context because "certificate of authority" is the term used throughout this code in relation to an entity's authority to engage in business.

(2) Section 3(f), V.T.I.C. Article 21.54, refers to the "State Board of Insurance operating fund." Under the authority of Chapter 4, Acts of the 72nd Legislature, 1st Called Session, 1991, the Texas Department of Insurance operating fund (the later name of the State Board of Insurance operating fund) was converted to an account in the general revenue fund.

Throughout this chapter, the revised law is drafted accordingly.

[Sections 2201.105-2201.150 reserved for expansion]

SUBCHAPTER D. RISK RETENTION GROUPS

NOT CHARTERED IN THIS STATE

Revised Law

Sec. 2201.151. COMPLIANCE REQUIRED. A risk retention group chartered and authorized to engage in business in another state, Bermuda, or the Cayman Islands shall comply with this subchapter to engage in business as a risk retention group in this state. (V.T.I.C. Art. 21.54, Sec. 4(a).)

Source Law

Sec. 4. (a) A risk retention group chartered and licensed in another state, Bermuda, or the Cayman Islands and seeking to do business as a risk retention group in this state must comply with this section.

Revised Law

Sec. 2201.152. PREREQUISITES TO OFFERING INSURANCE. (a) Before offering insurance in this state, a risk retention group not chartered in this state must submit to the commissioner:

(1) a statement that:

(A) identifies the state or states in which the group is chartered and authorized to engage in business as a liability insurer, the date of charter, and the group's principal place of business; and

(B) provides any other information the commissioner requires to verify that the group qualifies as a risk retention group under Subchapter B, including information on the group's membership;

(2) except as provided by Subsection (b), a copy of the group's plan of operation, as described by Section 2201.202, and revisions of that plan submitted to the state in which the group is chartered and authorized to engage in business; and

(3) a statement of registration that designates the commissioner as the group's agent for the purpose of receiving

1 service of legal documents or process as provided by Chapter 804.

2 (b) A risk retention group is not required to submit a plan
3 of operation under this section with respect to any line or
4 classification of liability insurance that:

5 (1) was defined in the Product Liability Risk
6 Retention Act of 1981 (15 U.S.C. Section 3901 et seq.), as that Act
7 existed before October 27, 1986; and

8 (2) was offered before October 27, 1986, by any risk
9 retention group that had been chartered and operating for at least
10 three years before that date. (V.T.I.C. Art. 21.54, Sec. 4(b).)

11 Source Law

12 (b) Before offering insurance in this state, a
13 risk retention group shall submit to the commissioner
14 of this state the following:

15 (1) a statement identifying the state or
16 states in which the risk retention group is chartered
17 and licensed as a liability insurance company, date of
18 chartering, its principal place of business, and such
19 other information, including information on its
20 membership, as the commissioner of this state may
21 require to verify that the group qualifies as a risk
22 retention group under the definition in Subdivision
23 (10) of Section 2 of this article;

24 (2) a copy of its plan of operation or a
25 feasibility study and revisions of that plan or study
26 submitted to the state in which it is chartered and
27 licensed, provided, however, this provision relating
28 to the submission of a plan of operation or feasibility
29 study shall not apply with respect to any line or
30 classification of liability insurance which:

31 (A) was defined in the Product
32 Liability Risk Retention Act of 1981 before October
33 27, 1986; and

34 (B) was offered before such date by
35 any risk retention group which had been chartered and
36 operating for not less than three years before that
37 date; and

38 (3) a statement of registration that
39 designates the commissioner as its agent for the
40 purpose of receiving service of legal documents or
41 process as provided by Chapter 804.

42 Revisor's Note

43 (1) Section 4(b), V.T.I.C. Article 21.54,
44 states certain requirements a risk retention group
45 must meet before offering insurance in this state. The
46 revised law adds "not chartered in this state"
47 following "risk retention group" to clarify the
48 applicability of those requirements. Section 4(a),

1 V.T.I.C. Article 21.54, refers to a risk retention
2 group chartered in another state, Bermuda, or the
3 Cayman Islands, and it is clear that the references
4 throughout Section 4 to a "risk retention group" are
5 referring to a group described by Section 4(a).
6 Because Section 4, V.T.I.C. Article 21.54, applies
7 only to risk retention groups not chartered in this
8 state, similar clarifications are made throughout this
9 chapter.

10 (2) Section 4(1), V.T.I.C. Article 21.54,
11 imposes a requirement on certain risk retention groups
12 to provide notice to the commissioner of insurance
13 within 30 days of the effective date of the article as
14 amended by Chapter 115, Acts of the 70th Legislature,
15 Regular Session, 1987. The effective date of that act
16 was May 19, 1987. The revised law omits the provision
17 as executed. The omitted law reads:

18 (1) Any risk retention group which
19 was doing business in this state prior to
20 the enactment of this article shall, within
21 30 days after the effective date of this
22 article, furnish notice to the commissioner
23 of this state pursuant to the provisions of
24 Subsection (b) of this section and shall
25 thereafter comply with all other provisions
26 pertaining to risk retention groups not
27 chartered in this state as provided by this
28 article.

29 Revised Law

30 Sec. 2201.153. REQUIREMENTS FOR CONTINUING BUSINESS. (a)
31 A risk retention group not chartered in this state that engages in
32 business in this state shall submit to the commissioner:

33 (1) a copy of the group's financial statement
34 submitted to the state in which the group is chartered and
35 authorized to engage in business;

36 (2) a copy of each examination of the group as
37 certified by the commissioner, director, or superintendent of
38 insurance of another state or other public official conducting the
39 examination;

1 (3) on the commissioner's request, a copy of any audit
2 performed with respect to the group; and

3 (4) any other information required to verify that the
4 group continues to qualify as a risk retention group under
5 Subchapter B.

6 (b) A financial statement submitted under Subsection (a)(1)
7 must:

8 (1) be certified by an independent public accountant;
9 and

10 (2) contain a statement of opinion on loss and loss
11 adjustment expense reserves made:

12 (A) under criteria established by the National
13 Association of Insurance Commissioners; and

14 (B) by a member of the American Academy of
15 Actuaries or a qualified loss reserve specialist. (V.T.I.C. Art.
16 21.54, Sec. 4(d).)

17 Source Law

18 (d) Any such risk retention group doing business
19 in this state shall submit to the commissioner of this
20 state:

21 (1) a copy of the group's financial
22 statement submitted to the state in which the risk
23 retention group is chartered and licensed, which shall
24 be certified by an independent public accountant and
25 contain a statement of opinion on loss and loss
26 adjustment expense reserves made by a member of the
27 American Academy of Actuaries or a qualified loss
28 reserve specialist, under criteria established by the
29 National Association of Insurance Commissioners;

30 (2) a copy of each examination of the risk
31 retention group as certified by the commissioner or
32 public official conducting the examination;

33 (3) on request by the commissioner of this
34 state, a copy of any audit performed with respect to
35 the risk retention group; and

36 (4) such information as may be required to
37 verify its continuing qualification under the
38 definition of risk retention group in Subdivision (10)
39 of Section 2 of this article.

40 Revised Law

41 Sec. 2201.154. FILING FEES. (a) The commissioner by rule
42 shall impose a filing fee in an amount not to exceed \$500 for filing
43 the items described by Sections 2201.152(a)(1) and (2).

44 (b) The commissioner by rule may impose a filing fee in an

1 amount not to exceed \$500 for filing the financial statement under
2 Section 2201.153(a)(1). A risk retention group shall provide to
3 the comptroller all information the comptroller requests in
4 connection with the reporting, collection, enforcement, and
5 administration of the fee.

6 (c) Fees collected under this section shall be deposited to
7 the credit of the Texas Department of Insurance operating account.
8 (V.T.I.C. Art. 21.54, Secs. 4(c), (e), (f) (part).)

9 Source Law

10 (c) A filing fee not to exceed \$500 as
11 established by board regulation shall be imposed for
12 filing the items under Subdivisions (1) and (2) of
13 Subsection (b) of this section. Fees collected under
14 Subsection (b) shall be deposited in the State
15 Treasury to the credit of the State Board of Insurance
16 operating fund.

17 (e) A filing fee not to exceed \$500 as
18 established by commissioner regulation may be imposed
19 for the filing of the financial statement under
20 Subdivision (1) of Subsection (d) of this section.
21 Fees collected for filing the statement shall be
22 deposited in the State Treasury to the credit of the
23 general revenue fund to be reallocated to the Texas
24 Department of Insurance operating fund.

25 (f) . . . Groups shall provide to the
26 comptroller all information the comptroller may
27 request in connection with the reporting, collection,
28 enforcement, and administration . . . of the fee
29 imposed under Subsection (e) of this section.

30 Revised Law

31 Sec. 2201.155. PAYMENT OF TAXES. (a) A risk retention
32 group not chartered in this state is liable for the payment of
33 premium and maintenance taxes and taxes on premiums of direct
34 business for risks located in this state and shall report to the
35 commissioner the net premiums written for risks located in this
36 state. The group is subject to taxation, and any fine or penalty
37 related to that taxation, on the same basis as a foreign admitted
38 insurer in accordance with Chapters 4, 201, 202, 203, 221, 222, 224,
39 227, and 251-257.

40 (b) A risk retention group shall provide to the comptroller
41 all information the comptroller requests in connection with the
42 reporting, collection, enforcement, and administration of taxes
43 under this section. (V.T.I.C. Art. 21.54, Sec. 4(f) (part).)

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(f) Such risk retention group shall be liable for the payment of premium and maintenance taxes and taxes on premiums of direct business for risks located within this state and shall report to the commissioner of this state the net premiums written for risks located within this state. Such risk retention group shall be subject to taxation, and any applicable fines and penalties related thereto, on the same basis as a foreign admitted insurer pursuant to Chapters 4 and 5 of this code. Groups shall provide to the comptroller all information the comptroller may request in connection with the reporting, collection, enforcement, and administration of taxes due under this article and

Section 4(f), V.T.I.C. Article 21.54, provides that a risk retention group is subject to taxation on the same basis as a foreign admitted insurer pursuant to "Chapters 4 and 5 of this code." The relevant provisions of V.T.I.C. Chapters 4 and 5 that are revised are revised as Chapters 201, 202, 203, 221, 222, 224, 227, and 251-257 of this code. For that reason, the revised law substitutes a reference to "Chapters 4, 201, 202, 203, 221, 222, 224, 227, and 251-257" for the reference to "Chapters 4 and 5."

Sec. 2201.156. EXAMINATION OF FINANCIAL CONDITION;
DISSOLUTION OR DELINQUENCY PROCEEDINGS. (a) A risk retention
group not chartered in this state must submit to an examination by
the commissioner to determine the group's financial condition if
the commissioner of insurance of the jurisdiction in which the
group is chartered and authorized to engage in business has not
initiated an examination on or before the 60th day after the date
the commissioner of this state requests an examination.

(b) The commissioner shall:

(1) coordinate the examination under Subsection (a) to avoid unjustified repetition; and

(2) conduct the examination in an expeditious manner under Sections 401.051, 401.052, 401.054-401.062, 401.103-401.106,

1 401.151, 401.152, 401.155, and 401.156 and Chapters 86 and 803 in
2 accordance with the National Association of Insurance
3 Commissioners Financial Condition Examiner's Handbook.

4 (c) A risk retention group not chartered in this state that
5 engages in business in this state must comply with an order issued
6 in a voluntary dissolution proceeding or in a delinquency
7 proceeding commenced by the commissioner or by a commissioner of
8 another jurisdiction if, after an examination under this section,
9 there is a finding that the group is financially impaired.
10 (V.T.I.C. Art. 21.54, Secs. 4(i), (j).)

11 Source Law

12 (i) A risk retention group must submit to an
13 examination by the commissioner of this state to
14 determine its financial condition if the commissioner
15 of the jurisdiction in which the group is chartered and
16 licensed has not initiated an examination or does not
17 initiate an examination within 60 days after the date
18 the request is made by the commissioner of this state.
19 Any such examination shall be coordinated to avoid
20 unjustified repetition and conducted in an expeditious
21 manner in accordance with the National Association of
22 Insurance Commissioners Examiner Handbook and
23 pursuant to Articles 1.15, 1.16, 1.17, 1.18, 1.19, and
24 1.28 of this code.

25 (j) A risk retention group not chartered in this
26 state and doing business in this state must comply with
27 a lawful order issued in a voluntary dissolution
28 proceeding or in a delinquency proceeding commenced by
29 a commissioner if there has been a finding of financial
30 impairment after an examination under Subsection (i)
31 of this section.

32 Revisor's Note

33 (1) Section 4(i), V.T.I.C. Article 21.54,
34 refers to the National Association of Insurance
35 Commissioners "Examiner Handbook." The correct name
36 of the handbook is the "Financial Condition Examiner's
37 Handbook," and the revised law is drafted accordingly.

38 (2) Section 4(j), V.T.I.C. Article 21.54,
39 requires compliance with a "lawful order" issued in
40 certain proceedings. The revised law omits "lawful"
41 as unnecessary because the word does not add to the
42 clear meaning of the law. Compliance with an order is
43 necessary only if the order is lawful.

1 Revised Law

2 Sec. 2201.157. APPLICABILITY OF STATE LAWS PROHIBITING
3 CERTAIN ACTS OR PRACTICES. (a) A risk retention group not
4 chartered in this state shall comply with the laws of this state
5 relating to deceptive, false, or fraudulent acts or practices,
6 including Chapters 541 and 543.

7 (b) A risk retention group not chartered in this state and
8 the group's agents and representatives shall comply with Chapter
9 542. (V.T.I.C. Art. 21.54, Secs. 4(g), (h).)

10 Source Law

11 (g) A risk retention group and its agents and
12 representatives shall comply with Article 21.21-2 of
13 this code.

14 (h) A risk retention group shall comply with the
15 laws of this state relating to deceptive, false, or
16 fraudulent acts or practices, including Articles 21.21
17 and 21.21-A of this code.

18 Revised Law

19 Sec. 2201.158. INJUNCTIVE RELIEF. (a) A risk retention
20 group not chartered in this state must comply with the terms of an
21 injunction issued by a court of this state or any other state based
22 on a finding that the group is in a hazardous financial condition or
23 is financially impaired.

24 (b) Injunctive relief must be issued by a court if the
25 commissioner seeks to enjoin a risk retention group not chartered
26 in this state from:

27 (1) violating the law of this state prohibiting
28 deceptive, false, or fraudulent acts or practices;

29 (2) soliciting or selling insurance to a person who is
30 not eligible for membership in the group; or

31 (3) soliciting or selling insurance or operating when
32 the group is in a hazardous financial condition or is financially
33 impaired. (V.T.I.C. Art. 21.54, Secs. 4(k), 12(c).)

34 Source Law

35 [Sec. 4]

36 (k) A risk retention group not chartered in this
37 state must comply with the terms of an injunction
38 issued by a court of competent jurisdiction of this
39 state or any other state based upon a finding that such

group is in hazardous financial condition or is financially impaired.

[Sec. 12]

(c) Injunctive relief must be issued by a court of competent jurisdiction when the board seeks to enjoin a risk retention group not chartered in this state from:

(1) violating the law of this state prohibiting deceptive, false, or fraudulent acts or practices;

(2) soliciting or selling insurance to a person who is not eligible for membership in the risk retention group; or

(3) soliciting or selling insurance by or operation of a risk retention group that is in hazardous financial condition or is financially impaired.

Revisor's Note

Sections 4(k) and 12(c), V.T.I.C. Article 21.54, refer to a court "of competent jurisdiction." The revised law omits the quoted language as unnecessary because the general laws of civil jurisdiction determine which courts have jurisdiction over a matter. For example, see Sections 24.007-24.011, Government Code, for the general jurisdiction of district courts in this state.

[Sections 2201.159-2201.200 reserved for expansion]

SUBCHAPTER E. PROVISIONS REGULATING GENERAL OPERATION OF RISK RETENTION GROUPS

Revised Law

Sec. 2201.201. SCOPE OF AUTHORITY. A risk retention group may engage in the business of insurance in this state only:

(1) as a risk retention group; and

(2) to conduct the activities described in this chapter. (V.T.I.C. Art. 21.54, Sec. 5(d).)

Source Law

(d) A risk retention group may engage in the business of insurance in this state only as such a group and only for conducting the activities described in this article.

Revised Law

Sec. 2201.202. PLAN OF OPERATION. A plan of operation submitted to the commissioner under Section 2201.103 or 2201.152

1 must be in the form of an analysis that presents the expected
2 activities and results of a risk retention group, including, at a
3 minimum:

4 (1) information sufficient to verify that the group's
5 members are engaged in businesses or activities that are similar or
6 related with respect to the liability to which those members are
7 exposed by virtue of any related, similar, or common product,
8 trade, business, operations, premises, or services;

9 (2) for each state in which the group intends to
10 operate, the coverages, deductibles, coverage limits, rates, and
11 rating classification systems for each line of insurance the group
12 intends to offer;

13 (3) historical and expected loss experience of the
14 proposed members and national experience of similar exposures to
15 the extent that this experience is reasonably available;

16 (4) pro forma financial statements and projections;

17 (5) appropriate opinions, including a determination
18 of minimum premium or participation levels required to begin
19 operations and to prevent a hazardous financial condition, by:

20 (A) a qualified, independent casualty actuary
21 who is a member in good standing of the American Academy of
22 Actuaries; or

23 (B) an individual who the commissioner
24 recognizes as having comparable training and experience;

25 (6) identification of management, underwriting and
26 claims procedures, marketing methods, managerial oversight
27 methods, and investment policies; and

28 (7) other matters prescribed by the insurance laws of
29 the state in which the group is chartered. (V.T.I.C. Art. 21.54,
30 Sec. 2(8).)

31 Source Law

32 Sec. 2. In this article:

33 (8) "Plan of operation or feasibility
34 study" means an analysis that presents the expected
35 activities and results of a risk retention group

1 including, at a minimum:

2 (A) information sufficient to verify
3 that its members are engaged in businesses or
4 activities that are similar or related with respect to
5 the liability to which such members are exposed by
6 virtue of any related, similar, or common business,
7 trade, product, services, premises, or operations;

8 (B) for each state in which it
9 intends to operate, the coverages, deductibles,
10 coverage limits, rates, and rating classification
11 systems for each line of insurance the group intends to
12 offer;

13 (C) historical and expected loss
14 experience of the proposed members and national
15 experience of similar exposures to the extent that
16 this experience is reasonably available;

17 (D) pro forma financial statements
18 and projections;

19 (E) appropriate opinions by a
20 qualified, independent casualty actuary who is a
21 member in good standing of the American Academy of
22 Actuaries or an individual who is recognized by the
23 commissioner of this state as having comparable
24 training and experience, including a determination of
25 minimum premium or participation levels required to
26 commence operations and to prevent a hazardous
27 financial condition;

28 (F) identification of management,
29 underwriting and claims procedures, marketing
30 methods, managerial oversight methods, and investment
31 policies; and

32 (G) other matters as may be
33 prescribed by the insurance laws of the state in which
34 the risk retention group is chartered.

35 Revised Law

36 Sec. 2201.203. AGENT TO VERIFY AUTHORITY. Before placing
37 business with a risk retention group, each agent shall secure from
38 the appropriate insurance regulatory authority a certified copy of
39 the certificate of authority verifying that the insurer is
40 authorized in the insurer's domiciliary jurisdiction to write the
41 liability insurance policy the agent proposes to procure from the
42 insurer. (V.T.I.C. Art. 21.54, Sec. 10(d).)

43 Source Law

44 (d) Before placing business with a risk
45 retention group, each agent shall secure from the
46 appropriate insurance regulatory authority a
47 certified copy of the certificate of authority
48 verifying that the insurer is authorized in its
49 domiciliary jurisdiction to write the liability
50 insurance policy proposed to be procured from it by the
51 agent.

52 Revised Law

53 Sec. 2201.204. APPLICABILITY OF CERTAIN REQUIREMENTS FOR
54 LIABILITY INSURERS. A risk retention group authorized to engage in

1 business in this state under Subchapter C or D must participate on
2 the same basis as a liability insurer holding a certificate of
3 authority to engage in the business of insurance in this state in:

- 4 (1) the Texas Windstorm Insurance Association;
5 (2) joint underwriting associations;
6 (3) mandatory liability and assigned risk pools; and
7 (4) residual market facilities. (V.T.I.C. Art. 21.54,
8 Sec. 11(c).)

9 Source Law

10 (c) A risk retention group chartered and
11 licensed in this state and a risk retention group
12 qualified to do business in this state must
13 participate in the catastrophe property insurance
14 pool, joint underwriting associations, mandatory
15 liability and assigned risk pools, and residual market
16 facilities on the same basis as a liability insurer
17 holding a certificate of authority to do the business
18 of insurance in this state.

19 Revisor's Note

20 Section 11(c), V.T.I.C. Article 21.54, refers to
21 the "catastrophe property insurance pool." V.T.I.C.
22 Article 21.49, revised as Chapter 2210 of this code,
23 was enacted by Chapter 100, Acts of the 62nd
24 Legislature, Regular Session, 1971, which adopted the
25 Texas Catastrophe Property Insurance Pool Act. The
26 "pool" was administered by the Texas Catastrophe
27 Property Insurance Association. "Pool" was never a
28 defined term under Article 21.49, and most amendments
29 to that article refer to the "association," rather
30 than the "pool." In 1997, the short title of the
31 article was changed to the "Texas Windstorm Insurance
32 Association Act" by Chapter 438, Acts of the 75th
33 Legislature, Regular Session. To conform to the title
34 change, the revised law substitutes "Texas Windstorm
35 Insurance Association" for "catastrophe property
36 insurance pool."

37 Revised Law

38 Sec. 2201.205. RISK RETENTION GROUP PARTICIPATION IN

1 INSOLVENCY GUARANTY FUND PROHIBITED. A risk retention group may
2 not be required or permitted to join or contribute financially to
3 any insurance insolvency guaranty fund or similar mechanism in this
4 state. A risk retention group, and any of the group's insureds or
5 claimants against an insured, may not receive any benefit from an
6 insurance insolvency guaranty fund or similar mechanism in this
7 state for a claim arising under an insurance policy issued by the
8 group. (V.T.I.C. Art. 21.54, Sec. 11(a).)

9 Source Law

10 Sec. 11. (a) No risk retention group shall be
11 required or permitted to join or contribute
12 financially to any insurance insolvency guaranty fund
13 or similar mechanism in this state, nor shall a risk
14 retention group or its insureds or claimants against
15 its insureds receive any benefit from such fund for
16 claims arising under the insurance policies issued by
17 such retention group.

18 Revised Law

19 Sec. 2201.206. REQUIRED NOTICE. (a) Any policy issued by a
20 risk retention group must contain in 10-point type on the front page
21 and on the declarations page the following notice:

22 NOTICE

23 This policy is issued by your risk retention
24 group. Your risk retention group may not be
25 subject to all of the insurance laws and
26 regulations of your state. State insurance
27 insolvency guaranty funds are not available
28 for your risk retention group.

29 (b) Each person, firm, partnership, or corporation licensed
30 under Chapter 981, 4051, or 4056 shall inform each prospective
31 insured on business to be placed with a risk retention group of the
32 notice required by Subsection (a). (V.T.I.C. Art. 21.54, Secs.
33 5(a), 10(f) (part).)

34 Source Law

35 Sec. 5. (a) Any policy issued by a risk
36 retention group shall contain in 10-point type on the
37 front page and the declaration page the following
38 notice:

39 NOTICE

1 This policy is issued by your risk retention
2 group. Your risk retention group may not be
3 subject to all of the insurance laws and
4 regulations of your state. State insurance
5 insolvency guaranty funds are not available
6 for your risk retention group.

7 [Sec. 10]

8 (f) Every person, firm, partnership, or
9 corporation licensed pursuant to the provisions of
10 Article 1.14-2, 21.11, or 21.14 of this code on
11 business placed with risk retention groups or . . .
12 shall inform each prospective insured of the
13 provisions of the notice required by Subsection (a) of
14 Section 5 of this article in the case of a risk
15 retention group and

16 Revisor's Note

17 Section 10(f), V.T.I.C. Article 21.54, refers to
18 V.T.I.C. Article 1.14-2. The relevant provisions of
19 that article were revised as Chapter 981 of this code.
20 The revised law is drafted accordingly.

21 Revised Law

22 Sec. 2201.207. PROHIBITED ACTIVITIES. A risk retention
23 group may not:

24 (1) solicit or sell insurance to any person who is not
25 eligible for membership in the group;

26 (2) solicit or sell insurance or operate if the group
27 is in a hazardous financial condition or is financially impaired;
28 or

29 (3) engage in business in this state if an insurer is
30 directly or indirectly a member or owner of the group, unless all of
31 the group members are insurers. (V.T.I.C. Art. 21.54, Secs. 5(b),
32 (c).)

33 Source Law

34 (b) The following acts by a risk retention group
35 are prohibited:

36 (1) the solicitation or sale of insurance
37 by a risk retention group to any person who is not
38 eligible for membership in the group; and

39 (2) the solicitation or sale of insurance
40 by or operation of a risk retention group that is in a
41 hazardous financial condition or is financially
42 impaired.

43 (c) A risk retention group shall not do business
44 in this state if an insurance company is directly or
45 indirectly a member or owner of the risk retention
46 group, other than in the case of a risk retention group
47 all of whose members are insurance companies.

Revised Law

Sec. 2201.208. INJUNCTIVE RELIEF. An order issued by a United States district court enjoining a risk retention group from soliciting or selling insurance or operating in any state, in all states, or in any territory or possession of the United States on a finding that the group is in a hazardous financial condition, is financially impaired, or is insolvent is enforceable in the courts of this state. (V.T.I.C. Art. 21.54, Sec. 14.)

Source Law

Sec. 14. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance or operating in any state, in all states, or in any territory or possession of the United States on a finding that the group is in a hazardous financial condition, is financially impaired, or is insolvent is enforceable in the courts of this state.

Revised Law

Sec. 2201.209. PENALTIES. (a) A risk retention group that is authorized to engage in business in this state under Subchapter C or D and that violates this chapter is subject to all sanctions and penalties applicable to an insurer that holds a certificate of authority under Chapters 822 and 861, including revocation of the authority to engage in business in this state.

(b) A risk retention group not chartered in this state that violates this chapter is also subject to any fine or penalty applicable to a foreign admitted insurer generally, including revocation of the authority to engage in business in this state.

(c) A risk retention group engaging in business in this state that is not authorized to engage in business under Subchapter C or D is considered an unauthorized insurer and is subject to Section 823.457, Subchapters A-P, Chapter 442, and Chapters 101, 441, 804, and 801, other than Section 801.056. (V.T.I.C. Art. 21.54, Secs. 4(m), 13.)

Source Law

[Sec. 4]

(m) A risk retention group which violates any provision of this article shall be subject to fines and penalties applicable to foreign admitted insurers

generally, including revocation of its right to do business in this state.

Sec. 13. (a) A risk retention group that is qualified to do business in this state under Section 3 or 4 of this article and that violates this article is subject to all sanctions and penalties applicable to an insurer that holds a certificate of authority under Chapters 2 and 8 of this code including revocation of its license and the right to do business in this state.

(b) A risk retention group doing business in this state that is not qualified to do business in this state under Section 3 or 4 of this article is considered an unauthorized insurer and is subject to Articles 1.14, 1.14-1, 1.36, 21.28, and 21.28-A of this code.

[Sections 2201.210-2201.250 reserved for expansion]

SUBCHAPTER F. PURCHASING GROUPS

Revised Law

Sec. 2201.251. GENERAL QUALIFICATIONS OF PURCHASING GROUP.

(a) A purchasing group must:

(1) have as one of the group's purposes the purchase of liability insurance on a group basis;

(2) be composed of members whose businesses or activities are similar or related with respect to the liability to which those members are exposed by virtue of any related, similar, or common product, trade, business, operations, premises, or services; and

(3) purchase group liability insurance only for the group's members and only to cover the members' similar or related liability exposure as described in Subdivision (2).

(b) A purchasing group may be domiciled in any state. (V.T.I.C. Art. 21.54, Sec. 2(9).)

Source Law

Sec. 2. In this article:

(9) "Purchasing group" means any group that:

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in Paragraph (C) of this subdivision;

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

1 (D) is domiciled in any state.

2 Revised Law

3 Sec. 2201.252. DETERMINATION OF LOCATION. (a) For
4 purposes of this subchapter, a purchasing group is considered to be
5 located in the state in which the highest aggregate premiums are in
6 force on the date the group insurance policy is written or renewed.
7 The group's location is ascertained on each placement or renewal of
8 insurance by the group with an insurer or risk retention group.

9 (b) For purposes of this section, a group insurance policy
10 is considered to be renewed annually. (V.T.I.C. Art. 21.54, Sec.
11 2(14).)

12 Source Law

13 Sec. 2. In this article:

14 (14) "Located" or "location," for the
15 purposes of determining the state in which a
16 purchasing group is located, means the state in which
17 the highest aggregate premiums are in force on the date
18 the group policy is written or renewed and shall be
19 ascertained upon each placement or renewal by the
20 purchasing group of insurance with an insurer or risk
21 retention group. For the purpose of determining the
22 purchasing group's location, the group policy shall be
23 deemed to be renewed annually.

24 Revisor's Note

25 Section 2(14), V.T.I.C. Article 21.54, provides
26 that a purchasing group's location is ascertained on
27 "each placement or renewal" of insurance by the group.
28 The revised law substitutes "placement or renewal"
29 because it is clear from the context that "of" in
30 "placement of renewal" is a typographical error and
31 that the legislature intended to use the phrase
32 "placement or renewal."

33 Revised Law

34 Sec. 2201.253. LIMITATIONS ON AUTHORITY. (a) A purchasing
35 group located in this state may not purchase liability insurance
36 from a risk retention group that is not chartered in a state or from
37 an insurer that does not hold a certificate of authority to engage
38 in the business of insurance in this state unless the purchase is
39 effected through a licensed agent acting under Chapter 981.

1 (b) A purchasing group may not offer insurance policy
2 coverage declared unlawful by the Texas Supreme Court. (V.T.I.C.
3 Art. 21.54, Secs. 8(a), (c).)

4 Source Law

5 Sec. 8. (a) A purchasing group located in this
6 state shall not purchase liability insurance from a
7 risk retention group that is not chartered in a state
8 or from an insurer that does not hold a certificate of
9 authority to do the business of insurance in the state
10 in which the purchasing group is located, unless the
11 purchase is effected through a licensed agent acting
12 pursuant to Article 1.14-2 of this code.

13 (c) No purchasing group may offer insurance
14 policy coverage declared unlawful by the highest court
15 of this state.

16 Revised Law

17 Sec. 2201.254. APPLICATION OF STATE LAW. (a) A purchasing
18 group meeting the criteria established under the Liability Risk
19 Retention Act of 1986 (15 U.S.C. Section 3901 et seq.) is exempt
20 from any law of this state that:

21 (1) relates to the creation of groups for the purchase
22 of insurance;

23 (2) requires countersignatures;

24 (3) prohibits group purchasing; or

25 (4) discriminates against a purchasing group or the
26 group's members.

27 (b) An insurer is exempt from any law of this state that
28 prohibits providing or offering to provide to a purchasing group or
29 the group's members advantages based on the group's or members' loss
30 and expense experience that are not afforded to other persons with
31 respect to rates, policy forms, coverages, or other matters.

32 (c) A purchasing group is subject to all other applicable
33 laws of this state. (V.T.I.C. Art. 21.54, Sec. 6.)

34 Source Law

35 Sec. 6. Any purchasing group meeting the
36 criteria established under the federal Liability Risk
37 Retention Act of 1986 shall be exempt from any law of
38 this state relating to the creation of groups for the
39 purchase of insurance, the requirement of
40 countersignatures, or the prohibition of group
41 purchasing or any law that would discriminate against
42 a purchasing group or its members. Also, an insurer

1 shall be exempt from any law of this state that
2 prohibits providing or offering to provide to a
3 purchasing group or its members advantages based on
4 their loss and expense experience not afforded to
5 other persons with respect to rates, policy forms,
6 coverages, or other matters. A purchasing group shall
7 be subject to all other applicable laws of this state.

8 Revised Law

9 Sec. 2201.255. NOTICE TO COMMISSIONER; FILING FEE.

10 (a) Before engaging in business in this state, a purchasing group
11 must provide notice to the commissioner. The notice must:

12 (1) identify the state in which the group is
13 domiciled;

14 (2) specify the lines and classifications of liability
15 insurance the group intends to purchase;

16 (3) specify the method by which and the persons, if
17 any, through whom insurance will be offered to group members whose
18 risks are located in this state;

19 (4) identify the insurer from which the group intends
20 to purchase group insurance and the domicile of that insurer;

21 (5) identify the group's principal place of business
22 and, if ascertainable at the time of filing, the group's location;
23 and

24 (6) provide other information the commissioner
25 requires to verify that the group qualifies as a purchasing group
26 under Section 2201.251.

27 (b) The commissioner by rule shall impose a filing fee in an
28 amount not to exceed \$100 for filing notice under this section.
29 Fees collected under this subsection shall be deposited to the
30 credit of the Texas Department of Insurance operating account.

31 (V.T.I.C. Art. 21.54, Sec. 7(a).)

32 Source Law

33 Sec. 7. (a) A purchasing group that intends to
34 do business in this state shall, prior to doing such
35 business, furnish notice to the commissioner of this
36 state. A filing fee not to exceed \$100 as established
37 by board regulation shall be imposed for the filing of
38 such notice. Fees collected under this subsection
39 shall be deposited in the State Treasury to the credit
40 of the State Board of Insurance operating fund. The
41 notice shall:

42 (1) identify the state in which the group

1 is domiciled;

2 (2) specify the lines and classifications
3 of liability insurance that the purchasing group
4 intends to purchase;

5 (3) specify the method by which and the
6 person or persons, if any, through whom insurance will
7 be offered to its members whose risks are located in
8 this state;

9 (4) identify the insurance company from
10 which the group intends to purchase its insurance and
11 the domicile of that company;

12 (5) identify the principal place of
13 business of the group and, if ascertainable at the time
14 of filing, the location of the group; and

15 (6) provide such other information as may
16 be required by the commissioner of this state to verify
17 that the purchasing group is qualified under
18 Subdivision (9) of Section 2 of this article.

19 Revised Law

20 Sec. 2201.256. REGISTRATION REQUIREMENT; FEES. (a) A
21 purchasing group shall register with and designate the commissioner
22 or other appropriate authority as the group's agent solely for the
23 purpose of receiving service of legal documents or process unless
24 the group:

25 (1) was domiciled before April 1, 1986, in any state of
26 the United States and is domiciled on and after October 27, 1986, in
27 any state of the United States;

28 (2) before October 27, 1986, purchased the group's
29 insurance from an insurer authorized to engage in business in any
30 state, and after October 27, 1986, purchased the group's insurance
31 from an insurer authorized to engage in business in any state;

32 (3) was a purchasing group under the requirements of
33 the Product Liability Risk Retention Act of 1981 (15 U.S.C. Section
34 3901 et seq.) before October 27, 1986; and

35 (4) does not purchase insurance that was not
36 authorized for purposes of an exemption under that Act as effective
37 before October 27, 1986.

38 (b) The commissioner by rule may impose a fee in an amount
39 not to exceed \$50 for each document served on the commissioner and
40 forwarded to the purchasing group. Fees collected under this
41 subsection shall be deposited to the credit of the Texas Department
42 of Insurance operating account. (V.T.I.C. Art. 21.54, Sec. 7(b).)

1 (b) Title 3 is used to compute applicable tax rates for a
2 purchasing group or any group member that pays premiums for
3 coverage of risks located in this state to:

4 (1) an insurer holding a certificate of authority to
5 engage in the business of insurance in this state; or

6 (2) a risk retention group authorized to engage in
7 business in this state.

8 (c) To the extent that a purchasing group or group member
9 pays premiums as described by Subsection (b), the insurer or risk
10 retention group receiving those premiums shall remit the tax to the
11 department.

12 (d) Chapter 225 is used to compute applicable tax rates for
13 a purchasing group or any group member that pays premiums for
14 coverage of risks located in this state to an eligible surplus lines
15 insurer. If a purchasing group or member pays those premiums, the
16 surplus lines agent shall report and remit the tax. If the agent
17 does not remit the tax, the purchasing group shall remit the tax.
18 (V.T.I.C. Art. 21.54, Sec. 9.)

19 Source Law

20 Sec. 9. (a) Premiums paid for coverage of risks
21 located in this state by purchasing groups or any
22 members of the purchasing group are subject to
23 taxation at the same rate and subject to the same
24 interest, fines, and penalties for nonpayment as that
25 applicable to premiums paid for similar coverage by
26 other insureds.

27 (b) Chapter 4 of this code shall be used to
28 calculate applicable tax rates when the purchasing
29 group or any members of the purchasing group pay
30 premiums for coverage of risks located in this state to
31 an insurance company holding a certificate of
32 authority to do the business of insurance in this state
33 or a risk retention group qualified to do business in
34 this state. Article 1.14-2 of this code is to be used
35 to calculate the applicable tax rates when the
36 purchasing group or any members of the purchasing
37 group pay premiums for coverage of risks located in
38 this state to a surplus lines insurance carrier.

39 (c) To the extent that the purchasing group or
40 its members pay premiums for coverage of risks located
41 within this state to an insurance company holding a
42 certificate of authority to do the business of
43 insurance in this state or a risk retention group
44 qualified to do business in this state, the insurance
45 company or risk retention group receiving those
46 premiums is responsible for remitting the tax to the
47 board.

48 (d) To the extent that the purchasing group or

1 its members pay premiums for coverage of risks located
2 within this state to a surplus lines insurance
3 carrier, the surplus lines agent shall report and pay
4 the taxes for premiums. To the extent the surplus
5 lines agent does not remit the tax, the purchasing
6 group shall pay the tax for coverage of risks located
7 in this state.

8 Revisor's Note

9 (1) Section 9(b), V.T.I.C. Article 21.54,
10 refers to V.T.I.C. Chapter 4. That chapter was revised
11 in various titles of this code, but the relevant
12 provisions were revised in Title 3 of this code. The
13 revised law is drafted accordingly.

14 (2) Sections 9(b) and (d), V.T.I.C. Article
15 21.54, refer to a "surplus lines insurance carrier."
16 To write surplus lines insurance in this state, an
17 insurer must be eligible under Chapter 981 of this
18 code. Chapter 981 defines and uses the term "eligible
19 surplus lines insurer." For clarity and consistency
20 of terminology within this code, the revised law
21 substitutes "eligible surplus lines insurer" for
22 "surplus lines insurance carrier."

23 Revised Law

24 Sec. 2201.258. PURCHASING GROUP PARTICIPATION IN
25 INSOLVENCY GUARANTY FUND PROHIBITED; EXCEPTION. (a) A claim
26 against a purchasing group or a group member may not be paid from
27 any insurance insolvency guaranty fund or similar mechanism in this
28 state.

29 (b) A purchasing group, a group member, or any claimant
30 against the group or group member may not receive any benefit from
31 an insurance insolvency guaranty fund or similar mechanism in this
32 state for a claim arising under an insurance policy procured
33 through the group unless the policy is underwritten by an insurer
34 authorized to engage in business in this state that, at the time of
35 the policy's issuance:

36 (1) has capital and surplus of at least \$25 million; or

37 (2) is a member of a company group that has combined

capital and surplus of at least \$25 million. (V.T.I.C. Art. 21.54,
Sec. 11(b).)

Source Law

(b) No claim against a purchasing group or its members shall be entitled to payment from any insurance insolvency guaranty fund or similar mechanism in this state, nor shall a purchasing group or its members or claimants against the group or its members receive any benefit from such fund for claims arising under the insurance policies procured through the purchasing group unless the policies are underwritten by insurance companies that are licensed in this state and have capital and surplus of at least \$25 million, or insurance companies that are licensed in this state that are members of company groups with combined capital and surplus of at least \$25 million, at the time of policy issuance.

Revised Law

Sec. 2201.259. REQUIRED NOTICE. (a) A purchasing group that obtains liability insurance from an insurer or a risk retention group shall provide notice to each group member that has a risk located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state and that the insurer or risk retention group may not be subject to all the insurance laws and rules of this state.

(b) Each person, firm, partnership, or corporation licensed under Chapter 981, 4051, or 4056 shall inform each prospective insured on business to be written through a purchasing group of the notice required by Subsection (a). (V.T.I.C. Art. 21.54, Secs. 8(b), 10(f) (part).)

Source Law

[Sec. 8]

(b) A purchasing group which obtains liability insurance from an insurer or a risk retention group shall inform each of the members of such group which have a risk located in this state that such risk is not protected by an insurance insolvency guaranty fund in this state and that such risk retention group or such insurer may not be subject to all insurance laws and regulations of this state.

[Sec. 10]

(f) Every person, firm, partnership, or corporation licensed pursuant to the provisions of Article 1.14-2, 21.11, or 21.14 of this code on business . . . written through a purchasing group shall inform each prospective insured of the provisions of the notice required by . . . Subsection (b) of Section 8 of this article in the case of a

purchasing group.

Revisor's Note

Section 10(f), V.T.I.C. Article 21.54, refers to V.T.I.C. Article 1.14-2. The revised law substitutes a reference to Chapter 981 of this code for the reason stated in the revisor's note to Section 2201.206.

CHAPTER 2202. JOINT UNDERWRITING

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